Multiculturalism and Citizenship Canada
Multiculturalisme et Citoyenneté Canada

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Second and Third Reports of Canada

Canada

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Multiculturalism and Citizenship Canada
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INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

SECOND AND THIRD REPORTS OF CANADA

Human Rights Directorate
Multiculturalism and Citizenship Canada

Ottawa

1990

Canada

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FOREWORD

This publication contains Canada's second and third reports submitted to the United Nations under the terms of the *International Covenant on Civil and Political Rights*. The second report was submitted in July 1989, the third report in August 1990. Both reports are scheduled to be reviewed by the United Nations Human Rights Committee at its October-November 1990 session.

Canada acceded to the *International Covenant on Civil and Political Rights* on May 19, 1976, and submitted its first report in 1979 and a supplementary report in 1983.

These reports are the result of close collaboration between the Government of Canada and the governments of the provinces and territories. For each government, preparation of the reports was the occasion to examine measures which have been taken to implement the provisions of the Covenant. This examination, along with numerous consultations which accompany it, serves as an invaluable process in facilitating the implementation of the Covenant in Canada.

The reports are published in Canada so that they can be made available to interested groups and individuals. Through their publication, it is hoped that Canadians will be encouraged to become familiar with the measures adopted in Canada to ensure the implementation of the Covenant and to broaden their understanding of the obligations contracted by Canada through its accession to this important multilateral treaty. To assist readers, the texts of the Covenant and Optional Protocol to the Covenant have been appended, as well as a selection of case references on the *Canadian Charter of Rights and Freedoms* and international law, and information on the United Nations Human Rights Committee.

Copies of this publication can be obtained from the Communications Branch of the Department of the Secretary of State or the Human Rights Directorate of Multiculturalism and Citizenship Canada, in Ottawa. These publications are distributed free of charge.

I. SECOND REPORT

Submitted in July 1989

I. SECOND REPORT OF CANADA

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INTRODUCTION

1. The second report of Canada on its implementation of the *International Covenant on Civil and Political Rights* focuses on information not contained in its first report of March 1979, its supplementary report of March 1983, nor provided to the Human Rights Committee at the time of the presentation of these reports in March 1980 and October 1984. The main period covered is until December 31, 1987. **Part I** sets out general information relating to constitutional developments in Canada. **Part II** outlines recent measures adopted by federal, provincial, and territorial governments, and also outlines case law relating to the *Canadian Charter of Rights and Freedoms*.

PART I: GENERAL INFORMATION RELATING TO CONSTITUTIONAL DEVELOPMENTS IN CANADA

Implementation of the Canadian Charter of Rights and Freedoms

2. At the time of the presentation of Canada's supplementary report in 1984, the general nature and contents of the *Canadian Charter of Rights and Freedoms*, which is similar in content to the Covenant, were outlined to the Human Rights Committee (Annexes 1 and 2[1]). Since that time, a substantial jurisprudence has developed in regard to its interpretation and application.[2]

3. Indeed, since the adoption of the Charter in 1982, there have been almost 1,000 reported judicial decisions, and significant changes in the Canadian legal system have been the result. These changes are discussed more fully in Part II of this report. In general, however, it can be stated that the courts have given considerably more effect to the provisions of the Charter than to comparable provisions of the *Canadian Bill of Rights*, which was discussed in Canada's first report.

4. Furthermore, Canadian courts have frequently relied upon international human rights law, including this Covenant, in interpreting the Charter. Indeed, the Chief Justice of the Supreme Court of Canada has emphasized the relevance of international human rights law. He wrote that "the Charter should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified" *(Reference re Public Service Employee Relations Act [Alta]*, at p. 349). There are already almost 100 Charter cases where reference has been made to international human rights law (Annex 4).

5. Federal and provincial governments in Canada have also taken a positive approach to Charter implementation. The *Statute Law (Canadian Charter of Rights and Freedoms) Amendment Act* requires the federal Minister of Justice to examine all legislation for consistency with the *Canadian Charter of Rights and Freedoms*, and to report any inconsistency to the House of Commons. This statute also amended almost 60 statutes to ensure

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1. The annexes are submitted separately and are not reproduced in this report. The list appears on page 27.

2. Citations for legislation and cases referred to in Part I and the federal portion of Part II are contained in Annex 3.

compliance with the Charter. The provinces and territories have also reviewed their legislation to ensure consistency with the Charter and enacted appropriate amending legislation, as discussed more fully in Part II of this report.

Some general features of the Charter

6. Certain rights in the Charter (electoral rights in s. 3, mobility rights in s. 6, and minority language educational rights in s. 23) are guaranteed only to Canadian citizens. For the most part, however, rights are guaranteed to "everyone", "every individual", or "anyone", so that they pertain to all persons within Canada (*Singh et al. v. Minister of Employment and Immigration*). This is in keeping with the General Comment of the Human Rights Committee on the position of aliens under the Covenant.

7. Section 32 of the Charter provides that it applies to federal and provincial legislatures and governments. Thus it applies to guarantee the rights of private persons in relation to governments. Under s. 32, the Charter has been interpreted by the courts to apply to the full range of governmental activities, including administrative practices and the acts of the executive branch of government, as well as to enactments of Parliament or the legislatures (*Operation Dismantle et al. v. The Queen et al.*). The Charter has also been held to apply to the common law (*Dolphin Delivery Ltd. v. Retail, Wholesale and Department Store Union et al.*).

8. Section 1 of the Charter defines the circumstances in which Charter rights can be limited. The Supreme Court of Canada has indicated that in order for a limit to meet its requirements, it must serve a sufficiently significant objective and employ proportionate means to attain it (*R. v. Oakes*).

9. Section 33 of the Charter permits a *non obstante* clause to be inserted in legislation, so that it may operate notwithstanding a violation of s. 2 or ss. 7 to 15 of the Charter. In *Alliance des professeurs de Montréal et al. v. A.G. Québec*, the Québec Court of Appeal stated that to invoke s. 33, the *non obstante* clause must be expressly stated, must be a part of the statute which is to be exempted, and must indicate which provision of the Charter is to be disregarded. More generally, the Court indicated that s. 33 must be strictly construed because of its impact on fundamental rights.

Constitutional developments

10. Part IV of the *Constitution Act, 1982* provides for the holding of at least three constitutional conferences on matters directly affecting aboriginal peoples, with participation by them. These conferences were held in 1983, 1984, 1985 and 1987. A major issue addressed at them was the possibility of entrenching some form of a right to aboriginal self-government in the Constitution. An agreement has not as yet been reached on this issue, because of difficulties in defining the concept of self-government for constitutional purposes. However, although the process of discussions on aboriginal constitutional issues mandated by Part IV of the *Constitution Act, 1982* has come to an end, the Government of Canada remains committed to pursuing constitutional reform in this area. The federal government is continuing to meet with aboriginal leaders who are attempting to develop a new basis for the renewal of discussions. The Prime Minister has stated his commitment to convene a further First Ministers' Conference on this issue should it be clear that there are reasonable prospects of success for agreement on a constitutional amendment.

11. In 1987, a Constitutional Accord was reached among federal and provincial First Ministers that the *Constitution Act, 1982* be amended in such a manner as to satisfy concerns of the Province of Québec in 1982 (Annex 5). Of special relevance in the context of human rights protection is an amendment that would require the Constitution of Canada to be interpreted in a manner consistent with the recognition of Canada's linguistic duality and Québec's place within Canada as a distinct society. By express stipulation this amendment would not, however, affect existing constitutional provisions concerning multicultural heritage and aboriginal peoples. In order to come into force, these proposed amendments will require the consent of the House of Commons and the provincial legislative assemblies. The House of Commons and most provincial legislative assemblies have already provided their consent.

PART II: MEASURES ADOPTED BY THE FEDERAL, PROVINCIAL, AND TERRITORIAL GOVERNMENTS

A. FEDERAL GOVERNMENT[3]

Article 1

12. Canada subscribes to the principles set forth in this article.

Article 2

13. Section 24 of the *Canadian Charter of Rights and Freedoms* enables anyone whose Charter rights or freedoms have been infringed to apply to a court of competent jurisdiction for an appropriate and just remedy. Section 52 of the *Constitution Act, 1982* further provides that any law inconsistent with the Constitution of Canada, including the Charter, is of no force and effect.

Article 3

14. Apart from the general equality guarantee contained in s. 15 of the Charter, s. 28 also states that the rights and freedoms referred to in the Charter are guaranteed equally to men and women.

15. Measures to prevent discrimination on the basis of sex and to promote equal opportunities for women are discussed under article 26 of this report. The number of women entering the labour force and the educational system in Canada has continually increased over the last decade. This is documented in the Department of Labour's report, "Women in the Labour Force", attached as Annex 7. It should also be noted that on March 4, 1982, Madame Justice Bertha Wilson was the first woman to be appointed to the bench of the Supreme Court of Canada, followed by Madame Justice L'Heureux-Dubé on April 15, 1987[4].

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3. For the convenience of the Human Rights Committee, Annex 6 sets out the page references for the discussion of the various articles of the Covenant in the federal portions of Canada's previous reports.

4. A third woman, Madame Justice Beverley McLachlin, was appointed to the Court on April 17, 1989.

Article 4

16. On November 18, 1987, a new comprehensive federal emergencies bill passed second reading in the House of Commons. If it becomes law, it will repeal the *War Measures Act*. In its preamble, it expressly states that in adopting emergency measures the Governor in Council is subject to the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*, and must have regard to the *International Covenant on Civil and Political Rights*, "particularly with respect to those fundamental rights that are not to be limited or abridged even in a national emergency". Other highlights of the bill are described in Annex 8.

Article 5

(i) Activities aimed at limiting Covenant rights

17. In Canada, there are a number of statutory provisions aimed at restricting the action of groups or individuals who advocate the limitation or destruction of the rights or freedoms recognized in the Covenant. One of these, s. 13 of the *Canadian Human Rights Act*, prohibits repeated communications by telephone of any matter that is likely to expose persons to hatred or contempt by reason of the fact that they are identifiable on the basis of a prohibited ground of discrimination. In 1979, John Ross Taylor and the Western Guard Party were held to be in violation of this provision and ordered to cease and desist their activities. In 1980, and again in 1984, they were convicted of contempt of court for continuing to transmit telephone messages, and Mr. Taylor was twice sentenced to a one-year prison term.

18. Mr. Taylor also argued that s. 13 of the *Canadian Human Rights Act* violated his guarantee of free expression. This argument was rejected by the Federal Court of Appeal in 1987, and leave to appeal to the Supreme Court of Canada was granted in late 1987.

(ii) Respect for rights not recognized by the Covenant

19. Section 26 of the Charter states that "[t]he guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada".

Article 6

(i) Right to Life

20. Section 7 of the Charter guarantees "the right to life, liberty and security of the person and the right not to be deprived thereof, except in accordance with the principles of fundamental justice". In *Singh et al. v. Minister of Employment and Immigration*, the Supreme Court of Canada held that the prospect of removal to a country where one's life would be threatened was a deprivation of the right to security of the person and that, therefore, refugee claimants are entitled to a full oral hearing.

21. The Government of Canada has established a variety of social and economic assistance programs. These include family allowance, unemployment insurance, and old age security systems by which individuals receive money directly from the federal government.

In addition, the federal government subsidizes various provincial and territorial health and welfare programs, including hospital and health insurance programs.

(ii) Capital punishment

22. The death penalty was abolished in Canada for offences under the *Criminal Code* in 1976. In recent years, the issue of whether to reinstate the death penalty for the most serious crimes under the *Criminal Code* became a high-profile one. As a consequence, a free vote was held in the House of Commons on June 30, 1987, on a motion for reinstatement of capital punishment. The motion was defeated by 148 votes to 127. The death penalty still exists, however, under the *Code of Service Discipline* in the *National Defence Act*. The death penalty provisions of this Act are currently under review, and specific attention is being given to article 6 of the Covenant.

Article 7

(i) Section 12 of the Charter

23. Section 12 of the Charter guarantees that everyone has the right not to be subjected to any cruel and unusual treatment or punishment. In *Smith v. R.*, the Supreme Court of Canada stated that the criterion to be applied in determining whether a punishment is cruel and unusual is "whether the punishment prescribed is so excessive as to outrage standards of decency". Thus, it held that a mandatory seven-year term for importing narcotics was grossly disproportionate where it applied regardless of the relative gravity of the offence. The Court also noted that punishments or treatments such as corporal punishment, lobotomization and castration will always be grossly disproportionate and outrage standards of decency.

24. In *Lyons v. R.*, the Supreme Court of Canada held that the imposition of an indeterminate sentence of detention against a "dangerous offender" for a "serious personal injury offence" did not violate s. 12 of the Charter. According to the Court, the sentence took into account the condition of this type of offender, who is not inhibited by normal standards of behaviour, so that future violent acts can be expected.

(ii) UN Convention against Torture

25. On June 24, 1987, the Government of Canada ratified the United Nations *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Attached as Annex 9 is a summary of amendments made to the *Criminal Code* as a consequence of the Convention.

(iii) Legal provisions governing police and security forces

26. The use of force by police agencies is regulated by legislative, regulatory and administrative provisions. The standards set out in these provisions meet and often exceed those set out in the UN *Code of Conduct for Law Enforcement Officials*.

27. Any member of the Royal Canadian Mounted Police who fails to respect the rights of all persons or who abuses his or her authority in the performance of duties is, in addition to being liable to criminal penalties, guilty of a Code of Conduct offence and liable to

punishment ranging from a simple reprimand to dismissal from the force (*An Act to amend the Royal Canadian Mounted Police Act*, S.C. 1986, c. 11, ss. 37, 41(1), 43(1) and 45.12(3)). As regards the Correctional Service of Canada (CSC), s. 3.1 of the *Penitentiary Service Regulations* specifically prohibits every member of the Service from administering, instigating, consenting to or acquiescing in the cruel, inhuman or degrading treatment or punishment of an offender who is or has been incarcerated in a penitentiary. Staff may be held criminally and civilly liable for any excessive use of force. Other policies of the Correctional Service require the placement of community observers in institutions following a serious incident that involves violence against staff. CSC policy allows for the Correctional Investigator or a representative to be present as an observer during an emergency situation. Post-emergency policy also explicitly states that inmates are to be treated fairly and humanely and provides for a thorough investigation into all aspects of the incident. Additionally, the policies of the CSC ensure the offender's right to accept or refuse any medical treatment. Relevant provisions of the *Code of Discipline*, as well as a booklet outlining the principles to be observed by CSC employees, are attached as Annex 10.

Article 8

28. The provisions discussed in Canada's first report are still applicable, except that the maximum term of imprisonment provided by the *Criminal Code* for forcible confinement has been increased from five to ten years.

Article 9

Paragraph 1:

29. Section 7 of the Charter guarantees the right of everyone "to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice". Section 9 states that "[e]veryone has the right not to be arbitrarily detained or imprisoned". The Supreme Court of Canada in *R. v. Therens* broadly interpreted the term "detained" to include any person who submits or acquiesces in a deprivation of liberty in compliance with a direction of a police officer, in circumstances where the person reasonably believes that no other choice but compliance is available. This, of course, includes arrest.

30. The Supreme Court of Canada has also held that indeterminate detention of persons convicted as "dangerous offenders" is not "arbitrary". Not only is the incarceration statutorily authorized, but the legislation narrowly defines a class of offenders with respect to whom it may be properly invoked and prescribes specifically the conditions under which an offender may be designated as dangerous (*Lyons v. R.*).

Paragraph 2:

(i) Right to be informed of the reasons for arrest

31. In addition to specific *Criminal Code* provisions, s. 10(*a*) of the Charter provides that "[e]veryone has the right on arrest or detention to be informed promptly of the reasons therefor".

(ii) Right to be promptly informed of charges

32. Section 11(*a*) of the Charter states that "[a]ny person charged with an offence has the right to be informed without unreasonable delay of the specific offence". This requires, according to the courts, that the charge be stated in a manner that reasonably informs the accused of the offence (*R. v. Lucas*; *Pettipas v. R.*). Additionally, s. 11(*a*) applies to persons prosecuted by the state for public offences involving punitive sanctions; i.e. criminal, quasi-criminal and regulatory offences. Generally, this section does not apply to proceedings aimed at maintaining discipline, professional standards or regulating conduct within a limited private sphere of activity, unless the consequences are of a penal nature (*Wigglesworth v. R.*; *Burnham v. Metropolitan Toronto Police*).

33. The *Criminal Code* requires that a document commencing a criminal process set out the substance of the offence with which the accused is charged and that it be given to the accused personally, subject to exceptional circumstances. Furthermore, every person who appears before a justice must, at that time, be officially informed of the charges being made. These provisions do not address all possible types of offences, but in practice criminal courts treat them as if they did. In any event, this would now be required by s. 11(*a*) of the Charter (*Mills v. R.*; *Carter v. The Queen*). Moreover, persons are normally informed of the charges being made prior to appearing before a justice. (Two exceptions to this practice are discussed at pages 29-30 of Canada's first report).

Paragraph 3:

(i) Right to stand trial within a reasonable time

34. Section 11(*b*) of the Charter states that "[a]ny person charged with an offence has the right to be tried within a reasonable time". The Supreme Court of Canada held in *Rahey v. R.* that, in assessing the reasonableness of a delay, the court may consider the prejudice to the accused, including prejudice to the ability to make full answer and defence and to the civil consequences of the criminal proceedings. Moreover, once an infringement is found, the minimum remedy is a stay of proceedings. Early case law also suggests that the question of unreasonable delay is from the time of the charge onward (*Re R. v. Morrison*; *R. v. Devji*), and that the failure of an accused to assert the right in s. 11(*b*) while awaiting trial does not necessarily preclude a violation of this section (*Mills v. R.*; *R. v. Askov et al.*).

35. Finally, the Supreme Court of Canada has held that the protection in s. 11(*b*) has no application to a delay of a foreign government in requesting extradition (*U.S.A. v. Allard and Charette*).

(ii) Right of an accused to be released pending trial

36. Section 11(*e*) of the Charter states that "[a]ny person charged with an offence has the right not to be denied reasonable bail without just cause".

Paragraph 4:

37. Section 10(*c*) of the Charter provides that "[e]veryone has the right on arrest or detention to have the validity of the detention determined by way of *habeas corpus* and to

be released if the detention is not lawful". Section 708 of the *Criminal Code* states that anyone deprived of his or her freedom may, subject to certain specified restrictions, apply for a writ of *habeas corpus*. Formerly, s. 459.1 did not permit the use of *habeas corpus* to obtain an order relating to or varying the terms of an interim release before trial or pending the determination of an appeal. This provision was repealed in 1985 and replaced by a provision empowering a court to give directions for expediting "any proceedings" in respect of the accused, including those relating to interim release.

Paragraph 5:

38. Pursuant to s. 24(1) of the Charter, a judge in a criminal proceeding may order compensation against an officer who has violated an accused's rights under the Charter.

Article 10

Paragraph 1:

39. Jurisdiction over correctional institutions is shared between Parliament and the provincial legislatures. The *Juvenile Delinquents Act*, discussed in Canada's first report, has been replaced by the *Young Offenders Act*, which is discussed later in this report. As regards adult inmates in federal institutions, their treatment as well as disciplinary procedures and the inmate complaints mechanism are outlined in Annex 11.

Paragraph 2:

(i) Treatment of accused adult persons

40. Reference should be made to the submissions of the provinces and territories.

(ii) Treatment of accused young offenders

41. On April 2, 1984, the *Young Offenders Act* came into force, replacing the *Juvenile Delinquents Act*. As with adult offenders, there is a preference for pre-trial release, absent considerations which require custody to ensure attendance at future proceedings or to prevent further offences. Additionally, pursuant to s. 11(*b*) of the Charter (discussed previously), young persons must be brought to trial as speedily as possible. The Act also requires that young people must, as a general rule, be detained separately from adult offenders.

Paragraph 3:

42. The *Young Offenders Act* provides for a wide range of non-custodial dispositions (e.g. treatment and probation orders) to take into account the special circumstances and needs of young people, the rights and needs of victims of crime, and the need to protect society. These are outlined at pages 13-14 of Annex 12. In addition, a youth court may order open or secure custody of a young offender in a special facility, separate from those designated for adults. "Open custody" refers to custody in institutions such as community residential centres, group homes, child-care institutions, or wilderness camps. "Secure custody" refers to custody in a facility for the secure containment of young persons, in which there are greater restrictions on liberty.

43. Custody dispositions which are at least one year in duration must be reviewed by a youth court by the end of one year or earlier. Temporary release is also provided for in the Act. The kinds of custody available and related procedures are discussed at pages 15-16 of Annex 12.

Article 12

44. Section 6 of the Charter guarantees every citizen of Canada the right to enter, remain in and leave Canada. In addition, every citizen and permanent resident of Canada has the right to reside and pursue the gaining of a livelihood in any province subject to certain specified exceptions, including special programs aimed at ameliorating the social or economic conditions of a disadvantaged province. The Supreme Court of Canada has held that the right to "pursue the gaining of a livelihood" guarantees to an individual the right to work without having to establish residence in the province of employment. It does not, however, grant a person an independent constitutional right to work (*Law Society of Upper Canada v. Skapinker*).

45. It has also been held that although extradition infringes on a citizen's right under s. 6 to remain in Canada, such a limit is justifiable under s. 1 of the Charter, having regard to the rationale of the *Extradition Act*, Canada's obligations to the international community and the history of such legislation in free and democratic societies. However, the manner in which extradition procedures are conducted in Canada and the conditions under which a fugitive is surrendered, can, if improper, still invite Charter scrutiny (*Schmidt v. The Queen et al.*; *Re Federal Republic of Germany v. Rauca*).

Article 13

46. Canada's Supplementary Report noted that a decision to grant or refuse a visa is an administrative one, so that a refusal was not subject to judicial review. However, recent case law indicates that Canadian courts will be increasingly responsive to applications for judicial review based on a lack of procedural fairness or error of law in administrative proceedings (*Martineau v. Matsqui Institution Disciplinary Bd.*; *Nicholson v. Haldimand-Norfolk Police Commrs. Bd.*).

Article 14

Paragraph 1:

(i) General

47. The rights contained in this paragraph are protected in Canadian society by virtue of ss. 7 and 11(*d*) of the Charter. Section 7 provides that no one may be deprived of the right to life, liberty and security of the person except in accordance with the principles of fundamental justice. Section 11(*d*) provides that "[a]ny person charged with an offence has the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal". In *Vaillancourt v. R.*, the Supreme Court of Canada held that it is a principle of fundamental justice that the essential elements of a criminal offence contain a minimum mental state reflecting the stigma and penalty attached to that offence. If the Crown is not required to prove this mental state beyond a reasonable doubt, both ss. 7 and 11(*d*) of the Charter are violated.

48. Examples of what the courts have considered contrary to the requirement of a "fair and public hearing" include pre-indictment delay caused by the police or Crown for an oblique purpose (*Re R. v. Carter*) and prejudicial publicity at a bail hearing (*Global Communications Limited v. State of California*). In contrast, cross-examination of an accused as to previous convictions does not preclude a fair hearing (*Corbett v. R.*).

49. A fugitive at an extradition hearing is not charged with an "offence" for the purpose of s. 11 of the Charter and thus cannot claim its protection. However, some of the interests involved in s. 11 (e.g. the right to bail) may be protected by other provisions of the Charter (*Schmidt v. The Queen et al.*).

(ii) Openness of judicial proceedings -- adult offenders

50. In *MacIntyre v. A.G. Nova Scotia*, the Supreme Court of Canada held that the common law presumption of openness in the criminal law process governs not only trial proceedings but all "judicial proceedings, whatever their nature, and in the exercise of judicial powers" (e.g. the issuance of search warrants). However, certain limitations on the presumption of openness may be permitted to protect such "social values of superordinate importance" as the right to a fair trial, the privacy of individuals that are presumed to be innocent, or the integrity of police investigations.

51. The above interests would not, however, pre-empt the presumption of openness in the trial process itself. Restrictions on trial proceedings are generally dealt with indirectly through such methods as a ban on the publication of the identity of a Crown witness (*R. v. McArthur*) or of an accused (*R. v. R.*). In either case, restrictions on access to court proceedings are a matter of judicial discretion, assessed on a case-by-case basis.

(iii) Openness of judicial proceedings -- young offenders

52. The presumption of openness is also recognized in youth-court proceedings. However, a youth court judge is empowered to exclude anyone in the following circumstances: (i) where the exclusion is in the interests of public morals, the maintenance of order or the proper administration of justice; or (ii) where information being presented to the court would be "seriously prejudicial" to any young person or child present, whether he or she is the accused, the victim or a witness. Canadian courts have held that because of the potentially harmful impact of identification and publicity on young persons, the above exceptions are a demonstrably justifiable limit under s. 1 of the Charter (*Southam Inc. v. The Queen*).

(iv) Independence of the judiciary

53. In *The Queen v. Valente*, the Supreme Court of Canada held that the three essential conditions of judicial independence are: (i) security of tenure (including the requirement of an independent inquiry before the power to remove a judge can be exercised); (ii) financial security (including security of salary or other remuneration, and, where appropriate, security of pension); and (iii) the institutional independence of the tribunal with respect to matters of administration bearing directly on the exercise of the judicial function. Virtually all Canadian courts, be they federally or provincially constituted, satisfy these conditions. The Supreme Court of Canada in *The Queen v. Beauregard* also affirmed that fundamental to

Canada's democratic system is the principle that the judiciary exercise its authority independently of the executive and legislative branches of government.

Paragraph 2:

54. Section 11(*d*) of the Charter provides that persons charged with a criminal offence have the right to be presumed innocent until proven guilty according to law. In *The Queen v. Oakes*, the Supreme Court of Canada noted that "[a]n individual charged with a criminal offence faces grave social and personal consequences" and that, therefore, the presumption of innocence was "essential in a society committed to fairness and social justice".

Paragraph 3:

(i) Right to be informed of charge

55. The right to be informed promptly of the reasons for which an individual is being detained or arrested is guaranteed by s. 10(*a*) of the Charter. Furthermore, s. 11(*a*) of the Charter requires that any person charged with an offence "be informed without unreasonable delay of the specific offence".

(ii) Right to make full answer and defence

56. Canadian courts have stated that "the principles of fundamental justice" in s. 7 of the Charter and the right to a "fair and public hearing" in s. 11(*d*) of the Charter include the right to make full answer and defence (*Corbett v. R.*; *Re R. & Potma*; *U.S.A. v. Smith*).

(iii) Right to be tried without undue delay

57. Reference should be made to the discussion under article 9(3).

(iv) Right of an accused to be present at trial

58. This right has been given constitutional recognition under s. 7 of the Charter as a principle of fundamental justice and under s. 11(*d*) as a necessary ingredient of a fair trial (*Rogers v. R.*, *Felipa v. R.*).

59. There are, however, three exceptions to the right of an accused to be present at trial. Two of these, under s. 431.1 and s. 738(3) of the *Criminal Code*, are discussed in Canada's first report. The third, contained in s. 577(2)(*a*) of the *Criminal Code*, permits the exclusion of an accused from the courtroom where his or her misconduct interrupts the proceedings in such a manner that it is not feasible to continue the proceedings in the accused's presence. This has been interpreted by the courts as implying conduct calculated to delay and obstruct indefinitely the trial so as to turn the administration of justice into a "farce" (*R. v. Pawliw*).

(v) Legal assistance

60. Section 10(*b*) of the Charter provides that "[e]veryone has the right on arrest or detention to retain and instruct counsel without delay and be informed of that right".

Courts have interpreted this provision as requiring that all questioning cease if a suspect expresses a desire to retain counsel (*Esposito v. R.*; *R. v. Williams*), and that an arrested or detained person has the right to consult with counsel in circumstances where the consultation cannot be overheard (*R. v. Dempsey*; *Lepage v. R.*; *R. v. McKane*). Section 10(*b*) does not, however, contemplate the exercise of the right to counsel prior to a lawful and reasonable on-the-scene search that is incidental to a lawful arrest (*R. v. DeBot*; *Guberman v. R.*).

61. Case law to date also indicates that, in certain limited circumstances, the Charter may require the appointment of counsel. For example, where legal aid had been denied in a serious and complex case, it was held that the principles of fundamental justice under s. 7 of the Charter and the right to a fair trial under s. 11(*d*) of the Charter can only be preserved with the appointment of counsel by the court (*R. v. Powell and Powell*; *Kononow v. The Queen*; *Re Martin*).

(vi) Examination of witnesses

62. Section 13 of the Charter ensures that a witness can testify without fear that the testimony will be used against him or her in subsequent proceedings (except in the case of perjury). Additional protection is offered by ss. 7 and 11(*d*) of the Charter.

(vii) Assistance of an interpreter

(a) The Canadian Charter of Rights and Freedoms

63. Section 14 of the Charter provides that "[a] party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter".

64. This section may be applicable even if a person speaks broken English or French and understands simple communications. According to the Ontario Court of Appeal, a person may be able to communicate in a language for general purposes, while not possessing sufficient comprehension or fluency to face a trial that has potentially serious consequences without the assistance of a qualified interpreter (*R. v. Petrovic*). Furthermore, even though an accused does not assert the right under s. 14, an interpreter ought to be provided if it appears to the trial judge that there may be a need for such assistance (*Tsang v. R.*).

(b) Right to be tried in either official language

65. *Criminal Code* provisions pertaining to an accused's right to be tried in the official language of his or her choice have been proclaimed into force in four provinces -- New Brunswick, Ontario, Manitoba and Saskatchewan -- and in the two territories. Two other provinces, Prince Edward Island and Nova Scotia, have partially implemented (i.e. for summary conviction offences) the right to be tried in either official language. The remaining Canadian provinces are expected to implement the language-of-trial provisions of the *Criminal Code* in the very near future. Court challenges are underway in several provinces where the *Criminal Code* provisions have not yet been implemented. A number of these cases are currently on appeal to the Supreme Court of Canada. The federal government has introduced C-72, the *Official Languages Bill*, which provides for a fixed implementation date

of January 1, 1990, for all provinces which have not implemented the language-of-trial provisions.

(viii) Right not to be compelled to testify against oneself

66. Section 11(*c*) of the Charter provides that "[a]ny person charged with an offence has the right not to be compelled to be a witness in proceedings against that person in respect of the offence". This protection applies to ordinary criminal proceedings as well as to non-criminal proceedings of a penal nature such as prosecution under the *Customs Act* for illegal importation of goods (*Amway Corporation v. The Queen*). In addition, s. 13 of the Charter ensures that a person will not be compelled to give potentially self-incriminating evidence in proceedings other than the proceedings in respect of the offence with which that person is charged.

67. There also exists in Canada a long-standing rule at common law that a confession obtained involuntarily from an accused by a person in authority is not admissible in proceedings against the accused. The onus of proof of the voluntariness of the confession lies upon the Crown and the burden of proof is proof beyond a reasonable doubt.

Paragraph 4:

68. The provisions of the Charter, discussed in the context of adult offenders, apply equally to young offenders. However, the *Young Offenders Act* has also established specific procedures and a separate court system for young persons, in recognition of their age and the desirability of promoting their rehabilitation. Specific safeguards in the Act include special rights to legal representation, special procedures for involving parents in youth-court proceedings, and a requirement that young persons be informed of their rights at particular stages of the process. A more detailed explanation of the measures contained in the Act can be found at pages 8-10 of Annex 12.

Paragraph 5:

69. Under the *Young Offenders Act*, young persons have similar rights of appeal to those of adults under the *Criminal Code*. Details of the right of appeal are discussed at page 17 of Annex 12.

Paragraph 6:

70. On March 17, 1988, guidelines for compensating persons who have been wrongfully convicted and imprisoned were endorsed by the federal and provincial governments. In the past, *ex gratia* payments have been made by the federal government in cases of a mis-carriage of justice.

Paragraph 7:

71. Section 11(*h*) of the Charter provides that "[a]ny person charged with an offence has the right if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again". The Supreme Court of Canada has held that, for the purposes of the rule against convictions, disciplinary offences are separate and distinct from criminal offences (*Wigglesworth v. R*).

Article 15

72. Section 11(*g*) of the Charter prohibits retroactive penal legislation. Similar to article 15(2) of the Covenant, it states that one cannot be found guilty on account of any act or omission unless, "at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations".

Change in penalty

73. Section 11(*i*) of the Charter provides that "if the punishment for the offence has been varied between the time of commission and the time of sentencing, [the offender is entitled] to the benefit of the lesser punishment".

Article 17

(i) Sections 7 and 8 of the Canadian Charter of Rights and Freedoms

74. Section 7 of the Charter, which guarantees the right to life, liberty and security of the person, has not been interpreted by the courts to confer an independent constitutional right to privacy. They have, however, indicated that it protects one's physical and mental integrity (*Videoflicks v. R.*). Thus, s. 7 may have some implications in the context of privacy, and, indeed, there are already cases to this effect (*Dyment v. R.*).

75. Section 8 of the Charter guarantees the right against unreasonable search or seizure. In *Hunter et al. v. Southam Inc.*, the Supreme Court of Canada concluded that its primary purpose is to protect privacy interests (p. 652). On this basis, it held that s. 10(1) and s. 10(3) of the *Combines Investigation Act*, which permitted the Director of Investigation and Research of the Combines Investigation Branch to authorize the search of premises for evidence of an offence against the *Combines Investigation Act*, were invalid, because of the perceived lack of impartiality of the Director. The Court stated that where it was feasible to obtain a warrant this was a pre-condition for a reasonable search and seizure. Similarly, in *Weatherall v. A.G. Canada*, the Federal Court, Trial Division, held that it was an unjustifiable intrusion of privacy to require male penitentiary inmates to submit to "strip searches" by female guards in non-emergency situations and, therefore, a violation of s. 8 of the Charter.

76. The *Statute Law (Canadian Charter of Rights and Freedoms) Act* amended numerous federal statutes to ensure that the requirements of s. 8 of the Charter, as interpreted in *Hunter et al. v. Southam Inc.*, were met. Of particular interest are amendments to the *Food and Drugs Act* and the *Narcotics Control Act* abolishing writs of assistance.

(ii) Other developments

77. On July 1, 1983, Part IV of the *Canadian Human Rights Act*, which was discussed at pp. 78-79 of the first report, was replaced by the *Privacy Act*. It accords to Canadian citizens, permanent residents and inmates of federal penitentiaries a right of access to and correction of their personal information which is held by the federal government. The *Privacy Act* also imposes a code of fair information practices on the federal government.

This code provides protection to individuals regarding the use and disclosure of their personal information by government institutions.

78. Between July 1, 1983, and March 31, 1987, there were 125,553 requests for access to personal information under the *Privacy Act*. The Act provides for an independent, two-tiered system of review when such access is refused. The first level of review is the Privacy Commissioner, and the second, the Federal Court of Canada.

79. The provisions and operation of the *Privacy Act* have been reviewed by the Parliamentary Standing Committee on Justice and Solicitor General, which presented its report on March 31, 1987. The government's response, *Access and Privacy: The Steps Ahead*, was tabled in Parliament on October 15, 1987. Among the commitments made by the government were the restriction of the use of social insurance numbers, the extension of the application of the Act to Crown corporations, and the promotion of the implementation of the *OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data* throughout the public and private sectors. These Guidelines were adhered to by Canada in 1984.

80. The *Canada Post Corporation Act* provides that "nothing in the course of the post is liable to demand, seizure or detention" except in the following very limited circumstances (s. 38(3)). The Canada Post Corporation may open mail, other than letters, to ensure that conditions prescribed by regulation are met (s. 39(1)), and it may also open all undeliverable mail (s. 39(2)). The Minister responsible for the Canada Post Corporation may order that mail not be delivered, where he/she has reasonable grounds to believe that it is part of the commission of an offence (s. 41). Customs officials may seize mail in certain circumstances pursuant to the *Customs Act* (s. 99(1)(*b*)). However, "mail" is defined under that Act in such a way as to preclude effectively letters (s. 99(2)). Finally, pursuant to the *Canadian Security Intelligence Service Act*, the Director of the Canadian Security Intelligence Service, or a designated employee, may apply for a warrant to intercept a communication where he/she has reasonable grounds to believe it necessary for the performance of statutory functions of the Service (s. 21).

81. The *Young Offenders Act* restricts publication of the identity of alleged offenders in youth-court proceedings and also of that of young victims and witnesses (ss. 17, 38 and 39). It also limits access to records of young offenders to persons with a direct interest and sets out a maximum period for which these records can be kept and used (ss. 40-46).

82. The *Penitentiary Service Regulations* (s. 27) provide that visiting and correspondence privileges, in accordance with Commissioner's Directives, may be extended to inmates to assist in their reformation and rehabilitation. Inmates are encouraged to maintain and develop family ties through written correspondence, telephone communications and visits. The content of the envelopes of general correspondence is usually examined for contraband. However, privileged correspondence and correspondence with legal counsel is usually forwarded unopened. The Director of an institution may authorize that the correspondence be read, where he/she deems it necessary to ensure the security of the institution, the prevention of crime by inmates, or the protection of individual members of society. Inmates are given reasonable access to telephones and reasonable privacy during telephone conversations, consistent with security considerations. They are also permitted visits by legal counsel on official business under conditions which ensure confidentiality of the matters discussed.

83. In its General Comment 16(32)(*d*)(art.17), the Human Rights Committee has invited States to indicate in their reports the meaning given in their society to the terms "family" and "home". Neither of these terms has a legal definition in Canada. However, in regard to the term "home", both in the *Statute Law (Canadian Charter of Rights and Freedoms) Act* and in case law (*Belgoma Transportation Ltd. v. Director of Employment Standards*) the position has been taken that stricter requirements must be met for entering private dwellings than for entering business premises in order for the requirements of s. 8 of the Charter to be met.

84. Furthermore, although in general the term "family" is given a broad meaning in Canadian society, in *Toward Equality* -- the response of the federal government to the Report of the Parliamentary Committee on Equality Rights entitled *Equality for All* -- the position was taken that for certain purposes it may be appropriate to differentiate between legally married spouses and common-law spouses. However, none of these different implications relate to the privacy context.

Article 18

(i) Charter developments on freedom of religion

(a) The scope of the Charter guarantee of freedom of religion

85. Section 2 of the *Canadian Charter of Rights and Freedoms*, which guarantees everyone freedom of conscience and religion (s. 2(*a*)) and freedom of thought (s. 2(*b*)), has been interpreted by the courts in a manner consistent with article 18. Thus, in general conformity with paragraph 1 of Article 18, in *R. v. Big M Drug Mart*, the Supreme Court of Canada stated that "[t]he essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination" (p. 336).

86. Similarly, in a manner compatible with article 18, paragraphs 2 and 3, the Court in that case characterized freedom of religion as "the absence of coercion and restraint, ... includ[ing] indirect forms of control" (p. 336), and restricted limitations on it to those which are "necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others" (p. 337).

87. In regard to paragraph 4 of article 18, in *Jones v. R.*, the Supreme Court of Canada held that it was not inconsistent with the Charter to require a fundamentalist pastor who taught his and other children in a church basement to obtain governmental approval of the educational program. The Court noted, however, that "[c]ertainly a reasonable accommodation would have to be made in dealing with this issue to ensure that provincial interests in the quality of education were met in a way that did not unduly encroach on the religious convictions of the appellant" (p. 298).

(b) Charter litigation

88. In *R. v. Big M Drug Mart* the Supreme Court of Canada held that the federal *Lord's Day Act*, which required Sunday to be observed as a religious holiday, violated freedom of religion. On the other hand, in *Edwards Books and Art Ltd. v. The Queen*, it held that the

Ontario *Retail Business Holidays Act*, which is framed in a secular manner and contains an element of accommodation to those with a religious holiday other than Sunday, was valid as involving a reasonable limit on freedom of religion within the terms of s. 1 of the Charter.

89. Certain practices have been challenged unsuccessfully on the basis of s. 2(*a*) of the Charter. They include a judicial order preventing a Sikh accused from wearing a ceremonial sword in a court room (*R. v. Hothi et al.*) and a requirement that the children of Jehovah's Witnesses submit to blood transfusion (*McTavish and McTavish v. Director, Child Welfare Act*).

(ii) Other developments

90. The Correctional Service of Canada ensures that adequate facilities are made available for religious worship in federal penitentiaries. Within the boundaries of institutional safety, security and good order, special programs and facilities must be made available for Native offenders in these penitentiaries.

91. In 1984, the *Canada Labour Code* was amended to deal with the issue of employees who object on the basis of religious convictions or beliefs to joining a trade union or paying regular union dues. Section 169 of the Code now permits the Canada Labour Relations Board to order that such employees be exempted from these requirements, so long as they pay an amount equivalent to the union dues to a registered charity.

Article 19

(i) Section 2(*b*) of the Charter

(a) Paragraph 1 of article 19:

92. Paragraph 1 of article 19 guarantees the right to hold opinions without interference and, as pointed out by the Human Rights Committee in its General Comments on this article, permits no exception or limitation. Similarly, in *R. v. Big M Drug Mart*, the Supreme Court of Canada stressed the centrality of individual conscience to the democratic political tradition and the consequent need for an "unremitting protection" of the fundamental freedoms set out in s. 2 of the Charter, which as indicated above include freedom of thought, conscience and opinion (p. 346).

(b) Paragraph 2:

93. The courts have concluded that s. 2(*b*) of the Charter applies to all modes of communication, including non-linguistic ones such as picketing (*Dolphin Delivery Ltd. v. Retail, Wholesale and Department Store Union et al.*), and to all phases of communication from maker, supplier, distributor, retailer to the receiver (*Videoflicks Ltd. et al. v. R.*).

94. The courts have stressed that the core of s. 2(*b*) is the protection of political speech (*National Citizens Coalition Inc. et al v. A.G. Can.*). Artistic expression has also been provided protection (*Ontario Film and Video Appreciation Society v. Ontario Board of Censors*). The question of whether protection is also afforded to commercial speech has not as yet been conclusively determined, but in a decision which is under appeal to the

Supreme Court of Canada, the Québec Court of Appeal has held that commercial advertising is within the scope of s. 2(*b*) of the Charter (*Irwin Toy Ltd. v. A.G. Québec*).

95. Consistently with article 19(2), the Federal Court, Trial Division, has held that freedom of expression must include freedom of access to all information pertinent to the ideas or beliefs sought to be expressed, subject to reasonable limitations (*International Fund for Animal Welfare et al v. The Queen*). Indeed, the Court expressly took into account the terms of article 19 of the Covenant in reaching its conclusion (p. 259).

96. Section 2(*b*) specifically provides for freedom of the press and other media of communication. A major issue has been restrictions on access by the media to judicial proceedings. In general, the courts have concluded that freedom of the press to report court proceedings is a fundamental safeguard of a democratic society and, therefore, that any limitations on this freedom must be carefully scrutinized for compliance with s. 1 of the Charter (*Southam Inc. v. The Queen*).

(c) Paragraph 3:

97. The courts have held that limitations on freedom of expression must be clearly defined and have legal force (*Ontario Film and Video Appreciation Society v. Ontario Board of Censors*). Limitations have been upheld based on such considerations as public morals (*Red Hot Video Ltd. v. R.*), public order (*Osborne et al. v. The Queen*), and the rights and reputations of others (*Canadian Human Rights Commission v. Taylor*).

(ii) Other developments

98. In 1983, the *Access to Information Act* came into effect. It gives Canadian citizens and permanent residents access to records in the control of federal institutions, subject to certain limited exceptions, and provides for an independent review procedure of denials of access. Among the exceptions to access are information relating to the operations and responsibilities of government (e.g. bearing on national security), personal information, and third party information. In 1987, in *Access and Privacy: The Steps Ahead*, the federal government stated its commitment to extend the right of access to entities not previously covered and to foster public education about access legislation.

Article 20

99. The *Radio Regulations, 1986* and the *Television Broadcasting Regulations, 1987* prohibit the broadcast of any abusive comment or pictorial representation that tends to expose an individual, group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. The question of the compatibility of such legislation with the guarantee of freedom of expression in the Charter has so far been answered affirmatively in the courts (*Zundel v. R.*).

Article 21

100. Section 2(*c*) of the *Canadian Charter of Rights and Freedoms* guarantees freedom of peaceful assembly. The courts have indicated that it is closely linked with the other fundamental freedoms set out in s. 2. Indeed, in *Dolphin Delivery Ltd. v. Retail Wholesale and Department Store Union et al.*, it was on the basis of the guarantee of freedom of

expression in s. 2(*b*) that the Supreme Court of Canada concluded that peaceful picketing against the employer himself would receive the benefit of Charter protection, although on the facts of that case it held that the prohibition of secondary picketing (that is, against someone doing business with the employer) was justifiable within the terms of s. 1 of the Charter.

101. Similarly, in a case under appeal to the Supreme Court of Canada, the Federal Court, Trial Division, concluded on the basis of s. 2(*b*) that political groups have the right to congregate and express their political views in a public airport, subject to reasonable limitations (*Comité pour la République du Canada et al v. The Queen in Right of Canada*).

Article 22

(i) Section 2(*d*) of the Charter

102. The Supreme Court of Canada has concluded that freedom of association as guaranteed by s. 2(*d*) of the Charter only protects the right to engage collectively in those activities which are lawful for an individual but does not protect the objects of an association nor the means used to obtain these objects such as the right to strike (*Reference re Public Service Employee Relations Act (ALTA)*). As the Human Rights Committee is aware, this same matter was brought to its attention by the Alberta Union of Provincial Employees in Communication No.118/1982, which was dismissed at the admissibility stage on the ground that freedom of association in article 22 does not include the right to strike.

103. In a case under appeal, it has also been decided that freedom of association must necessarily include the freedom not to associate and, furthermore, that a requirement that employees who are not members of the union nevertheless pay union dues involved an unconstitutional impediment on the exercise of this freedom (*Lavigne v. Ontario Public Service Employees Union et al*).

(ii) Other developments

104. In 1986, employees of Parliament were granted collective bargaining rights for the first time by the *Parliamentary Employment Staff Relations Act.*

Article 23

105. Section 15 of the *Canadian Charter of Rights and Freedoms*, which is discussed more fully under article 26, prohibits discrimination on a number of grounds, without specifically mentioning marital or family status. However, in a Discussion Paper entitled *Equality Issues in Federal Law*, the federal government took the position that s. 15 should be interpreted to preclude discrimination on this basis (Annex 13). In *Equality For All*, the Parliamentary Sub-committee on Equality Rights supported this position, referring in particular to article 23(1) of the Covenant (Annex 14). The application of s. 15 to marital or family status has been confirmed by early case law (*MacVicar v. Superintendent of Family and Child Services*).

106. Section 248 of the *Criminal Code*, which made it an indictable offence to take away a female person with intent to force her to marry a male person, has been repealed because

of concerns that it involved the application of an unequal standard as between men and women.

107. The 1968 *Divorce Act* was repealed and replaced in 1986 by the *Divorce Act, 1985*. Pursuant to the new Act, either spouse may apply for support, child support and custody, with awards made on the basis of considerations that apply equally to both spouses. Provision is also made for joint-custody awards.

Article 24

(i) Section 15 of the Charter

108. Section 15 of the *Canadian Charter of Rights and Freedoms* guarantees every individual equality without discrimination on a number of grounds, including age. Furthermore, "every individual" in s. 15 includes children, and thus they are accorded the full ambit of its protection. Also, as discussed under article 23, it would appear that s. 15 precludes discrimination on the basis of family status, which would include the adoptive or illegitimate status of children.

109. A major issue that has been considered in this context is whether the distinctions based on age contained in the *Young Offenders Act* are justifiable in light of s. 15 of the Charter. In general, the courts have concluded that the very special purposes of this Act justify the drawing of certain distinctions based on age (*Re M and the Queen*).

(ii) Other developments

110. The Correctional Service of Canada ensures that adequate accommodation and pre-natal and post-natal care are provided to pregnant female offenders. Custody arrangements are made for the child outside the institution, taking into account as much as possible the offender's wishes.

111. The *Family Orders and Agreements Enforcement Assistance Act* was passed by Parliament in 1986 and, in 1987, agreement was reached with the provinces to give effect to Part I of this Act, which deals with the release of information from federal information banks to trace persons in default of support payments and to locate missing children taken by a parent contrary to custody and access arrangements. Part I was proclaimed November 30, 1987. Part II of the Act permits the garnisheeing of federal payments to debtor spouses in default of a support order, and was proclaimed on May 2, 1988.

112. In 1986, s. 10(3) of the *Canada Labour Standard Regulations* was amended so that there is no longer any difference between the minimum wage payable to employees under the age of 17 and those over 17.

113. Measures have been taken to provide more assistance to Indian communities and organizations so as to avoid the need to place Indian children outside their families, and, also, to ensure that services are culturally sensitive to the needs of these children and their families.

114. In 1987, the Minister of Health and Welfare appointed a Special Advisor on Child Sexual Abuse to co-ordinate action in this area.

Article 25

(a) Right to take part in public affairs

115. Section 3 of the *Canadian Charter of Rights and Freedoms* gives constitutional protection to the right of every citizen of Canada to stand for office in federal and provincial elections.

(b) Right to vote

116. Section 3 of the Charter also guarantees every citizen of Canada the right to vote in federal and provincial elections. The disqualification of penitentiary inmates from voting in federal elections pursuant to s. 14 of the *Canada Elections Act* has been held to be consistent with s. 3 (*Jolivet and Barker v. The Queen et al.*). On the other hand, it has also been held that federal authorities are required to take the necessary administrative measures to enable inmates in federal penitentiaries in Québec to exercise their right pursuant to Québec law to vote in Québec provincial elections, and that neither administrative nor security considerations would justify denying this right (*Lévesque v. Attorney General of Canada*). The Government of Canada accepted this decision without appeal. As the Committee is aware, this same factual situation was considered by it in communication No. R.25/113, which was dismissed at the admissibility stage.

(c) Equal access to public service

117. As discussed at pages 104-105 of the first report, the *Public Service Employment Act* requires appointments to the Public Service to be based on merit and to be made without discrimination. In 1983, the Act was amended to include family status and mental disability as prohibited grounds of discrimination.

118. In the case of certain positions, such as those requiring access to classified information or involving matters of security, applicants may be denied entrance into the Public Service on the basis of concerns about their loyalty to Canada or their reliability so far as it relates to their loyalty. The definition of security assessment appears in s. 2 of the *Canadian Security Intelligence Service Act*. Procedures and criteria relevant to the making of a security assessment are set out in the *Security Policy for the Government of Canada*, the statutory basis for which is the *Financial Administration Act*.

119. Under this policy, the senior official of the department or agency concerned decides, on receipt of a security assessment, whether to grant or deny a security clearance. Any person who suffers an adverse employment decision or is denied a contract as a result of the denial of a security clearance can ask the Security Intelligence Review Committee to review the decision to deny a security clearance. This Committee, which is independent from government, is required, following its investigation of the matter, to advise the officials involved and the complainant of any recommendations it may make on the matter.

120. Section 32 of the *Public Service Employment Act*, which precludes public servants from engaging in work for or against a candidate in an election for a political party, has been held to be consistent with the Charter on the basis of the importance of maintaining the political impartiality of the Public Service (*Osborne et al. v. The Queen*).

Article 26

(i) Section 15 of the Charter

121. On April 17, 1985, s. 15 of the *Canadian Charter of Rights and Freedoms*, which guarantees equality rights, came into force as part of the Constitution of Canada. It has not as yet been interpreted in a case before the Supreme Court of Canada. However, lower-court decisions indicate that it has a broader meaning than the comparable provision of the *Canadian Bill of Rights*. In particular, early case law has interpreted s. 15 to apply to the content of legislation as well as its administration (*McBeth v. Governor of Dalhousie College and University*), to preclude systemic or unintentional discrimination as well as direct discrimination (*Blainey v. Ontario Hockey Association et al.*), and to extend in scope beyond the grounds of discrimination enumerated in s. 15 (*Andrews v. Law Society of British Columbia*). The *Blainey* case also indicates that federal and provincial human rights legislation is subject to review for compliance with s. 15 of the Charter.

122. Section 36(1) of the *Constitution Act, 1982* commits federal and provincial governments to promote equal opportunities for the well-being of Canadians and to provide essential public services of reasonable quality to all Canadians. Section 36(2) sets forth a commitment to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide comparable levels of public services at comparable levels of taxation.

(a) Litigation Issues

123. Among the federal practices and legislation that have been successfully challenged on the basis of s. 15 of the Charter are the following: permitting female guards to do "strip searches" of male penitentiary inmates, where such searches cannot be conducted on female inmates by male guards (*Weatherall et al. v. A.G. Canada et al.*); requiring federal court judges to retire by age 70 (*Addy v. The Queen*); and permitting juries of six rather than twelve in the Yukon Territory (*R. v. Bailey*).

(b) Initiatives of the federal government relating to s. 15

124. In 1985, the Parliamentary Sub-committee on Equality Rights tabled its report, entitled *Equality for All*, which made 85 recommendations pertaining to equality on matters coming within federal jurisdiction. In its response to this report, entitled *Toward Equality*, the federal government made a number of commitments, including the abolition of mandatory retirement, the repeal of distinctions based on marital status in regard to pension rights, and increasing the availability of employment for women in the Canadian Armed Forces (Annex 15).

125. The following are among the steps that have been taken to implement these commitments: repealing s. 28 of the *Public Service Superannuation Regulations*, which established mandatory retirement age of 65; amending the *Canada Pension Plan* to provide for flexible retirement; and significantly increasing the number of gender-free and mixed-gender positions in the Canadian Armed Forces.

126. The federal government provides financial assistance for individuals or groups seeking to challenge federal legislation or practices in the courts on the basis of the equality rights

guaranteed in the Charter or seeking to challenge federal or provincial legislation or practices based on constitutionally guaranteed language rights. The Court Challenges Program has a $9-million budget for litigation and legal research plus administration funds over five years, and is administered by a private, non-profit organization, the Canadian Council on Social Development.

(ii) Canadian Human Rights Act

127. In 1985, the *Canadian Human Rights Act* was amended to establish an independent official, the President of the Human Rights Tribunal Panel, to select and appoint Tribunals to adjudicate human rights complaints, and also to replace the Canadian Human Rights Commission's power to "substantiate" complaints with one to determine whether the appointment of a Tribunal is warranted.

128. In *Toward Equality*, the federal government agreed to add the concept of reasonable accommodation to the *Canadian Human Rights Act*, to consider whether political belief and criminal conviction or criminal charges should be added to prohibited grounds of discrimination, and to repeal those provisions of the Act which permit mandatory retirement on a general basis.

129. Section 11 of the *Canadian Human Rights Act* requires employers to pay male and female employees employed in the same establishment equal wages for work of equal value. In 1986, guidelines on the application of that principle were gazetted. Up to March 1987, approximately 5,665 employees in female-dominated occupational groups in the federal Public Service have shared some $64.4 million retroactive and ongoing wage adjustments following settlement of equal pay for work of equal value complaints. These occupational groups include librarians, home economists, occupational and physical therapists, food and laundry workers, and hospital service workers. Furthermore, in March 1985, all thirteen Public Service unions accepted the invitation of the President of the Treasury Board to participate in a Joint Union/Management Committee to investigate and make recommendations on the service-wide implementation of s. 11 within the Public Service. In March 1987, the terms of reference and plan of action developed by the Committee for the study were presented to the President of the Treasury Board. Conduct of the study began in June 1987. The results of the study could possibly affect the wages of 81,000 employees of female-dominated groups.

130. There have been several very significant recent decisions of the Supreme Court of Canada pertaining to the *Canadian Human Rights Act*. In *Bhinder v. Canadian National Railway Co.*, the Supreme Court of Canada held that it prohibits systemic or adverse discrimination as well as intentional discrimination. In *Action Travail des Femmes v. Canadian National Railways Co. et al.*, the Supreme Court concluded that orders of affirmative action programs which take into consideration the effects of past discrimination are permissible under the Act. In *Robichaud et al. v. The Queen*, it held that the Act contemplates the imposition of liability on employers for all acts of their employees in the course of their employment, so that they are vicariously liable for sexual harassment practiced by employees.

(iii) Other initiatives pertaining to equality

131. As discussed in the first report at pages 105-107, s. 12(1)(*b*) of the *Indian Act* formerly provided that Indian women, but not Indian men, lost their status upon marrying non-Indians. This provision was the subject of a communication to the Human Rights Committee in *Lovelace v. Canada* (Communication No. 23/93), and the Committee concluded that it violated article 27 of the Covenant.

132. In the subsequent process of amending the *Indian Act* to remove sexually discriminatory provisions, Canada was very conscious of its obligations under the Covenant, both in repealing discriminatory provisions and in formulating replacements for them. Thus, sexually discriminatory and other problematic provisions of the *Indian Act* were repealed in 1985. Furthermore, those women who lost Indian status and band membership in the past as a result of the former s. 12(1)(*b*) are entitled to regain status and membership upon application. Their first-generation descendants are entitled to acquire Indian status and may apply to Indian bands for membership. Any dependent children may reside on the reserve with their parent who is a band member. Further data is provided under article 27 on implementation of this legislation.

133. Changes have been made to the conditions for maternity benefits provided by the *Unemployment Insurance Act, 1971*. Since 1984, it is no longer required that a woman have been an active member of the labour force at the time of conception. The 15 weeks during which maternity benefits are payable need no longer be consecutive. Section 46 of the Act, which prevented a pregnant women who did not qualify for maternity benefits from applying for regular or sickness benefits during the maternity period, has been repealed.

134. Section 37 of the *Canada Labour Code*, according to which disabled persons could in certain limited circumstances be paid less than the minimum wage, was repealed in 1985.

135. At the November 1986 First Ministers' Conference, the Prime Minister tabled *Dimensions of Equality: A Federal Work Plan for Women*. The work plan outlines government commitments to action that will improve the status of women in Canada. A report on progress made in implementing the commitments will be produced in the fall of 1988.

136. In 1986, the *Employment Equity Act* came into force. It guarantees equality in the workplace and establishes measures which seek to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, disabled persons and visible minorities. Employers under federal jurisdiction with 100 or more employees are required to eliminate systemic barriers to employment and to institute positive policies and practices designed to achieve the equitable representation of the designated groups in the work force. Employers are required to file annual reports on the representation of these groups in the work force.

137. The Federal Contractors Program requires that suppliers of goods and services to the federal government who employ 100 persons or more and who bid on contracts with $200,000 or more, commit themselves to implement employment equity as a condition of their bid.

138. Much progress has been made in the 1980's with respect to access for the disabled. Transport Canada has been conducting a "barrier-free program" to remove transportation

barriers for disabled travellers, where the department is the facility owner or source provider. Thus, for example, the Edmonton Airport has been modified to feature "state-of-the-art" physical access, communication aids and sensory equipment.

Article 27

(i) Relevant Charter provisions

139. Sections 15(2), 16-22, 23, 25, 27 and 35 of the *Constitution Act, 1982* are relevant to Canada's implementation of article 27.

140. On the basis of s. 23 of the Charter, which provides for certain language educational rights for English or French minorities throughout Canada, in *Québec Association of Protestant School Boards et al. v. Attorney General of Québec*, the Supreme Court of Canada held that provincial legislation which denied English-speaking Canadians access to English-language schools in Québec was invalid.

141. Section 27, which requires that the Charter be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians, has proved to be a significant factor in the interpretation of s. 2 on the fundamental freedoms and s. 15 on equality rights (*Videoflicks Ltd. et al. v. R.*; *Reference re Act to Amend the Education Act*).

(ii) Other developments

142. There are many minority groups in Canada, and the Government of Canada has not taken any steps to deny them their rights as set forth in article 27. Indeed, although not in its view required to do so by this article, the Government has taken the following positive steps to enhance their status within Canada.

143. In 1987, Bill C-72, which would replace the 1969 *Official Languages Act*, was tabled in Parliament. It elaborates on the principles contained in ss. 16 to 20 of the Charter and defines the rights of citizens and the obligations of federal institutions in language matters. Among the major features of the Bill are provisions on language of work and language of service to the public, participation of both official language communities in federal institutions, judicial recourse for breaches of the Act, and the promotion of the two official languages.

144. Steps are being taken towards the achievement of self-government for aboriginal groups in Canada, although agreement as to a constitutional amendment guaranteeing this right has not as yet been reached. However, with the proclamation of the *Cree-Naskapi (of Québec) Act* in 1984 and the *Sechelt Indian Band Self-Government Act* in 1986, forms of self-government were achieved by the Cree and Naskapi communities in northern Québec and the Sechelt band in British Columbia. Self-governmental proposals are currently being developed with Indian communities across Canada. The federal government has also made a commitment to pursue tripartite self-government discussions with the representatives of the Metis and off-reserve aboriginal peoples and the province concerned, where so requested by the province. To date, these tripartite discussions are underway in three provinces: Ontario, Manitoba and Prince Edward Island.

145. In 1986, the federal government policy on comprehensive land claims was revised. The new policy clarifies that aboriginal rights to be negotiated are limited to land-related rights, establishes new approaches to the resolution of claims to aboriginal title, and permits a broader range of self-government matters to be considered in the context of land claims. Six comprehensive land claims are currently being negotiated. Nine settlements of specific land claims have been reached since 1985, including several major settlements, such as that reached with the Cree Band of Fort Chipewyan in Northern Alberta, where the Band received $26 million in cash settlement as well as 12,275 acres of reserve land. Strenuous efforts are currently being made to settle the land claim of the Lubicon Lake Band of Alberta, including the appointment of a new federal negotiator and the first provincial negotiator.

146. As discussed under Article 26, sexually discriminatory and other provisions of the *Indian Act* were repealed in 1985, and Indians who had lost status in the past as a result of their operation became entitled to regain status and band membership. Also, Indian bands acquired the right to establish their own membership codes. Under this reinstatement process, so far some 33,000 people have been registered as status Indians. Documentation regarding membership codes has been received from 282 bands, or nearly half of the Indian bands. Furthermore, the transfer of membership control has now been completed for many of the bands submitting codes.

147. At present, over one half of Indian students in elementary and secondary schools receive some instruction in Native languages. In addition, the number of cultural and educational centres administered by Indians has risen from 57 to 71 between 1979 and 1987, and the annual budget from $5 million to $7.2 million.

148. In 1978, the Native Court Workers Program was established. Pursuant to this program, which has an annual budget of over 3 million dollars, the federal government cost-shares services delivered to Native clients by provincial court workers for orientation to the court process and for referral to legal and social services.

149. A major initiative was undertaken in 1987 with the tabling of Bill C-93, the *Canadian Multiculturalism Act*. It embodies a policy which promotes the understanding that multiculturalism reflects the cultural and racial diversity of Canadian society and acknowledges the freedom of all members of Canadian society to preserve and share their cultural heritage. Article 27 of the *International Covenant on Civil and Political Rights* is specifically quoted in the preamble of the Bill. The Multiculturalism Bill provides that all federal institutions should promote policies, programs, and practices that enhance the ability of individuals and communities of all origins to contribute to the continuing evolution of Canada.

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5. These annexes are submitted separately as reference material for the convenience of the members of the Human Rights Committee. Annex 4 is reproduced herein as Appendix III.

B. ROVINCIAL GOVERNMENTS

1. ALBERTA

150. Canada's first report provided information on Alberta's legislation that gave effect to the provisions of Articles 1 to 27 of the *International Covenant on Civil and Political Rights*. This report will summarize the changes that affect the legislative review provided in the first report under articles 3, 10, 17, 23 and 24 and provide new information respecting legislation and policy affecting the application of other articles of the Covenant.

Article 3

151. The *Canadian Charter of Rights and Freedoms* came into force generally in 1982, and its equality provisions came into force in 1985. In 1985, a number of Alberta acts were modified to bring them into conformity with the Charter provisions guaranteeing equality rights. For example, the *Exemption Act* and the *Minors' Property Act* were changed so that references to specific gender have been replaced with language which is gender neutral. As well, the provisions in the *Land Titles Act*, which placed married women in an inferior position to their husbands in respect to legal actions concerning land, were changed to reflect the view of the Charter that men and women (married or unmarried) are to be held equal before the law.

152. The *Domestic Relations Act* discriminates to the extent that it does not recognize guardianship rights of the father of a child born out of wedlock, providing that the mother is the sole guardian of such a child; however, court decisions have resulted in equality being extended to unwed involved biological fathers.

153. Section 15 of the *Domestic Relations Act* also impacts on the rights of unwed fathers with respect to children who are taken into the protective care of the Department of Social Services and who may be relinquished or placed for adoption, since the *Child Welfare Act* imports the definition of guardian contained in the *Domestic Relations Act*.

Article 6

154. Under the amended *Workers' Compensation Act* (1983), employers are obliged to inform workers of their responsibilities and duties under the Act.

155. Under the *Occupational Health and Safety Act*, no worker shall carry out any work where on reasonable and probable ground he/she believes that there exists an imminent danger. On being notified of the reasonable and probable belief that an imminent danger exists, the employer is required to investigate and take action to eliminate that danger. Where any disciplinary action is taken against a worker acting in compliance with the Act or regulation, the worker may appeal to an Occupational Health and Safety Officer who, following an investigation, may require: that the disciplinary action cease; that the worker be reinstated; that the worker be paid monies that would have been earned if he/she had not received a disciplinary action; and the removal of any employment reprimands from the employee's employment record. An order made by an Officer in this regard may be appealed by the employer to the Occupational Health and Safety Council.

Article 7

156. Departmental policies in child welfare do not prohibit the use of corporal punishment by foster parents in relation to children under their care.

Article 9

157. The *Dependent Adults Act* (R.S.A. 1980, c. D-32) contains provisions for the apprehension, confinement, compulsory care and treatment of an incompetent adult for whom a guardian has been appointed where a court is satisfied that (a) the adult is in a condition (as evidenced by expert assessment) presenting a danger to himself/herself or others, (b) the confinement is in the best interests of the dependent adult, and (c) compulsory care is appropriate to ensure the protection and treatment of the dependent adult. Such orders may be in effect for up to three years and may be continued for subsequent periods of up to three years upon review. Reviews may be initiated by others, other than the guardians of the dependent adult, once every six months, and temporary leaves of absence from places of compulsory care may be granted. Dependent adults may be represented by legal counsel at hearings.

158. The recently amended *Child Welfare Act* contains provisions for the apprehension, confinement and *secure* treatment of children who suffer from mental or behavioural disorders and who present a danger to themselves or others. Initial confinement of up to eight days may be authorized by a court, and subsequent secure treatment orders of up to 30 days which are renewable for successive 60- and 90-day periods may be granted. A child may have legal representation at any appearance before a court. A child or guardian may apply for a review of a secure treatment order once during the period of any order or renewal thereof. A child aged 12 or older is entitled to service of notice of an application for an application for a secure treatment order.

Article 10

159. Under the *Child Welfare Act*, a court order is required for the apprehension of a child in all cases other than emergencies. If a child is apprehended, a director has exclusive custody of the child, is responsible for care, maintenance and well-being, and may confine the child in a secure treatment institution if it is considered necessary to do so in order to protect the survival, security or development of the child. If a director confines a child, the director shall appear before the court within one day of the confinement to show cause why the confinement was necessary and, if necessary, to apply for an order authorizing the confinement of the child for a further period of not more than eight days. The court may order the child to be returned to a guardian or to be placed under supervision for a period of not more than six months.

160. In 1984, the *Young Offenders Act* was brought into force. It clarifies the rights of young people in respect to provincially created offences, protects children from incarceration with adult offenders, and limits the severity of sentences for young offenders (under 16 years of age). In addition to the enhancement of other procedural protections, it improves the right of young offenders to legal representation. This Act also modified provisions in the *Summary Convictions Act.*

Article 14

161. The *Alberta Evidence Act* was changed in 1985 to enhance the right of witnesses to protection from self-incrimination. A witness now has automatic protection from having his/her answers used or received in evidence against him/her in a prosecution under an act of the Legislature.

Article 17

162. Under the *Child Welfare Act*, the court may exclude any person, including the child and guardian, except a director, the Children's Guardian or a lawyer representing any of the parties, from all or part of the proceedings if the court considers that person's presence to be unnecessary to the conduct of the proceedings.

163. Privacy is considered to be encompassed under the "security of the person" definition in the Act.

164. Reporting of *Child Welfare Act* cases is permissible; however, publications of reports of proceedings under the Act may not confirm information which will identify or lead to the identification of a child or guardian of a child who are the subjects of such proceedings without prior consent of the court.

165. Hearings under the *Child Welfare Act* are presumed open unless the court orders that any person, including a guardian, be excluded.

166. Generally, decisions to disclose personal information under social services legislation are not subject to procedural safeguards or review mechanisms.

167. The *Juvenile Court Act* was repealed in 1980 with the enactment of the *Provincial Court Act* (R.S.A. 1980, c. P-20).

Article 18

168. Under the *School Act*, the Protestant or Roman Catholic minority may establish separate schools and may tax property for support of the schools so established. Private schools may be established by religious denominations upon approval of the Minister of Education.

169. Under the *Child Welfare Act*, the family's privacy and freedom, with respect to its own interests, are protected. The child, if capable of forming an opinion, is entitled to an opportunity to express that opinion on matters affecting him/her. A person who assumes responsibility for a child should make the child aware of the child's familial, cultural, social and religious heritage. A decision to remove a child from its family should likewise take this into account. In custody application under the *Domestic Relations Act*, the court may make such order as it thinks fit to ensure that an infant is brought up in a religion in which the parent or other responsible person has a legal right to require that the infant be brought up.

Article 23

170. Persons are prohibited from marriage where there is a guardianship order or trusteeship order or certificate of incapacity under the *Dependent Adults Act* unless a physician has certified in writing that the party has the capacity to understand the nature of the contract of marriage and the duties and responsibilities relating thereto. The trustee or guardian must have been given prior notice of the issuance of the marriage licence or the solemnization of the marriage, as the case may be. Under the *Dependent Adults Act*, the guardian has the authority to decide whether or not the dependent adult should apply or be permitted to apply for a licence. It is also an offence to solemnize a marriage where a party is under the influence of alcohol or drugs.

171. The *Matrimonial Property Act* provides for the distribution between the spouses of all property owned by both spouses and by each of them.

172. With the proclamation of the *Maintenance Enforcement Act* (R.S.A. 1985, c. M-05) in 1985, the enforcement of maintenance orders for benefit of children and families was greatly enhanced. Enforcement is centralized, and the full resources of the state are brought to bear on the task of pursuing those who are delinquent in maintenance payments. This Act also altered some of the provisions of the *Reciprocal Enforcement of Maintenance Orders Act*, *Court of Queen's Bench Act* and *Domestic Relations Act*.

Article 24

173. Under the recently amended *Child Welfare Act*, a child is given protective services if there are reasonable and probable grounds to believe that the survival, security or development of the child is endangered because he/she has been abandoned or lost, has no guardian, his/her guardian is unable or unwilling to provide the child with necessities of life including essential medical, surgical or other remedial treatment recommended by a physician, the child has been physically or emotionally injured or sexually abused, is in danger of being subjected to cruel and unusual treatment or punishment, or the condition or behaviour of the child prevents his/her guardian from providing him/her adequate care appropriate to meet his/her needs.

174. The Act states that the family is the basic unit of society and its well-being should be supported and preserved. A child, if he/she is capable of forming an opinion is entitled to an opportunity to express that opinion on matters affecting him/her, and the child's opinion should be considered by those making decisions that affect him/her. The family is responsible for the care and supervision of its children, and every child should have an opportunity to be a wanted and valued member of a family.

175. Any person who has reasonable and probable grounds to believe and believes that a child is in need of protective services shall forthwith report the matter to a director. Any person who fails to do so is guilty of an offence.

Article 25

176. The *Public Service Act* provides for: departmental competitions (where there are a large number of well-qualified applicants within the department); limited competitions (where a large number of well-qualified applicants exist within the Public Service); and

open competitions (where sufficient in-service applicants would not normally be forthcoming to ensure a good selection).

177. The Commissioner may exempt an appointment from competition if: satisfied that the person to be appointed has specialized knowledge or qualifications which are unlikely to be bettered through competition; the urgency of the requirement is such as to render the competition procedure impractical; or the exemption is necessary for the effective utilization of employees.

Article 27

178. Both the *Law of Property Act* and the *Sale of Goods Act* were amended in 1985 by the removal of provisions invalidating commercial transactions on Sunday, to remove any suggestion that the acts had discriminatory effects on religious grounds.

2. BRITISH COLUMBIA

Part I

179. Since the first report, many changes have been made to legislation in British Columbia relevant to the *International Covenant on Civil and Political Rights*. In particular, passage of the *Canadian Charter of Rights and Freedoms* has had a significant impact. The *Charter of Rights Amendments Act, 1985*, S.B.C. 1985, c. 68, amended provisions of 51 provincial statutes to bring them in line with the equality provisions of section 15 of the Charter. In general, these statutory changes have had the following results:

1. the equal treatment of male and female persons;

2. the abolition of the distinction between children born in and children born out of lawful wedlock;

3. the removal of irrelevant references to age; and

4. the extension of rights of Canadian citizens to other persons who are permanent residents of Canada.

180. All of the statutes of British Columbia were revised in 1979 after the first report was submitted. Accordingly, citations of relevant statutes have been updated.

Part II

Article 2

181. Since the first report, British Columbia has passed new human rights legislation. The *Human Rights Act*, S.B.C. 1984, c. 22, continues the prohibition of discrimination with respect to public facilities, purchase of property, tenancy, employment advertisements, employment, and membership in trade unions, employers' and occupational associations. In addition to the grounds of race, religion, colour, sex, ancestry, and place of origin, protected from discrimination by the previous *Human Rights Code of British Columbia*, the new Act includes marital status, and mental and physical disability. The *Human Rights Act* no longer includes a "reasonable cause" test for discriminatory acts.

182. Section 10 establishes the British Columbia Council of Human Rights, which is empowered to investigate complaints of discrimination (sections 11 and 12). The Council may attempt to facilitate a voluntary settlement between the parties during this process. Following the investigation, the Council either decides to discontinue the proceedings or refers the complaint to a hearing (section 14). The designated Council Member can either conduct a formal oral hearing or receive written submissions from both parties.

183. If a complaint is upheld, persons who are found to have contravened the Act shall be ordered to cease and desist the discriminatory practice and may be ordered to pay compensation for lost wages or salary and up to $2,000 for humiliation or injury to personal dignity. There is provision for judicial review of decisions of the Council.

184. Since its inception in September 1984, the Council has dealt with 333 complaints filed under the previous *Human Rights Code*, and has received nearly 800 under the new legislation. Approximately two thirds of complaints are employment-related, with racial discrimination, physical disability, and sex and sexual harassment being the most prevalent basis of discriminatory treatment.

185. Under the *Ombudsman Act*, R.S.B.C. 1979, c. 306, the Ombudsman is empowered to receive and investigate citizens' complaints regarding decisions, actions or procedures of government and other public agencies. Since the office of the Ombudsman was established in 1979, it has received 61,194 complaints and inquiries to the end of 1986, with an average of more than 11,000 annually from 1984 to 1986. Approximately half of these problems fall within the Ombudsman's jurisdiction. Of this number, slightly over a third of complaints are resolved or corrected, while the remainder are either withdrawn by the complainant or found to be unsubstantiated. The Ombudsman's office has also issued a number of public reports aimed at reducing unfairness in public administration, such as identifying needed safeguards in procedures for criminal record checks of persons who work with children and other vulnerable individuals, and a review of the Workers' Compensation claims and appeals process.

Article 3

186. The *Family Relations Act*, R.S.B.C. 1979, c. 121, has been revised since the first report. Part 3 of this Act provides for the equality of entitlement to family assets on the breakup of the marriage. Family assets are defined as property owned by one or both spouses and ordinarily used for family purposes by a spouse or a minor child of either spouse.

187. The language of section 2(*a*) of the *Name Act*, R.S.B.C. 1979, c. 295, has been amended by the *Charter of Rights Amendments Act, 1985* to permit either spouse to take the name of the other spouse, if so desired. The *Vital Statistics Act*, R.S.B.C. 1979, c. 425, was revised in 1986 to allow a child to be registered with the surname of either the mother or the father.

188. The *Land (Spouse Protection) Act*, R.S.B.C. 1979, c. 223 (formerly *Wife's Protection Act*), incorporates equal rights of both spouses with regard to land ownership.

Article 4

189. The *Emergency Program Act*, R.S.B.C. 1979, c. 106, has been implemented when required for particular emergencies such as the search and rescue of a hiker or salvage of a plane crash, but there has been no occasion requiring declaration of a general public emergency since the first report. Administration of this Act has been moved from the Ministry of the Environment and Parks to the Attorney General.

Article 5

190. The *Civil Rights Protection Act*, S.B.C. 1981, c. 12, prohibits the dissemination of hate literature. In reaction to several racist incidents in the province in the late 1970's, the Minister of Labour requested a report on the subject which led to the drafting of this Act, passed unanimously by the legislature. The Act defines a "prohibited act" as "any conduct

or communication by a person that has as its purpose interference with the civil rights of a person or class of persons by promoting hatred... or (relative) superiority or inferiority... on the basis of colour, race, religion, ethnic origin or place of origin". Remedies for persons who have been so violated can include the recovery of damages or exemplary damages.

Article 6

191. British Columbia has a comprehensive system of publicly insured hospital and medical coverage, preventive care, community care programs, and public health protection initiatives. The primary legislation directed toward the maintenance of life and health was outlined in British Columbia's section of Canada's Second Report on Articles 6-9 of the *International Covenant on Economic, Social and Cultural Rights*, under article 9. Information on a range of statutes pertaining to income assistance, workplace health and safety, food standards, public safety and environmental protection has also been provided in previous provincial reports on this covenant.

192. With respect to Acquired Immune Deficiency Syndrome (AIDS), a considerable number of public health initiatives are being undertaken. These include an AIDS testing and counselling service provided by the Ministry of Health, and public education and prevention initiatives for physicians, schools, employers and the general public.

Article 7

193. As indicated in the first report, the *Police Act*, R.S.B.C. 1979, c. 331, provides a procedure for citizens' complaints regarding police misconduct (section 39). Approximately 300 complaints are received per year, of which over half are resolved informally and the remainder are taken to a formal investigation or public inquiry. In 1987, legislative amendments were introduced which would make the complaints mechanism more accessible to the public by means of the appointment of a special Complaints Commissioner.

194. Inmates in correctional institutions have the right under the *Corrections Act*, R.S.B.C. 1979, c. 70 (section 45), to appeal prison conditions or disciplinary measures. Each year, approximately 500 complaints from prisoners are received by the Ministry of Attorney General, which carries out a thorough investigation on a confidential basis. Persons not satisfied with the handling of complaints may also pursue the matter with the Ombudsman of British Columbia.

195. With respect to cruel or degrading treatment in the home, the Women's Secretariat under the Ministry of Advanced Education and Job Training has established an interministry Working Group on Family Violence. This group will co-ordinate activities with regard to law enforcement, victim services and social services. Abuse of the elderly in family situations has recently been identified as a specific problem and is being addressed by various agencies who work with the elderly through provision of respite and homemaker services to ease stress on the family.

Article 8

196. Very limited use has been made of provisions described in the first report which permit the use of compulsory or unpaid labour for civil defence under the *Emergency Program Act*, or for controlling forest fires under the *Forest Act*, R.S.B.C. 1979, c. 140.

For example, the latter provision is seldom used because most forest fires are fought by volunteers who are locally recruited and trained, and receive payment based on the *Forest Act Regulation*, B.C. Reg. 139/81 and the *Employment Standards Regulation*, B.C. Reg. 37/81.

Articles 9 and 14

197. The *Offence Act*, R.S.B.C. 1979, c. 305, has replaced the *Summary Convictions Act* in providing procedures for fair treatment of persons who are charged with offences and also at later stages in the judicial process, including trial, sentencing, and appeal procedures.

Article 10

198. The *Corrections Act* authorizes the minister responsible to inspect a correctional centre and permits the minister to investigate the conduct of any person employed in the correctional centre. The *Correctional Centre Rules and Regulations 1986* specifies what constitutes proper treatment of inmates as well as inmates' rights such as contact with family, a fair hearing process regarding discipline and right of appeal.

199. Maltreatment of prisoners is also prohibited by the codified standards of conduct accepted as working conditions by Correction employees. In a recent case, a provincial corrections officer was dismissed for allowing two fellow officers to beat an inmate in his custody. The officer did not intervene, report the incident or acknowledge that it took place when asked about it by his superiors. A neutral labour arbitrator upheld the dismissal on the ground that his passive behaviour was a breach of trust.

200. Section 12 of the *Young Offenders (British Columbia) Act*, S.B.C. 1984, c. 30, requires a young person (12 to 17 years of age) in custody to be held separate and apart from an adult convicted of an offence. Under section 5(*a*) of the *Correctional Centre Rules and Regulations*, all persons remanded in custody but not convicted are held in separate centres or units from those who have been convicted and sentenced.

Article 16

201. As indicated in the first report, every citizen of British Columbia has a right to recognition as a person before the law unless specifically excluded by statute. The main exceptions are children under 19 and those who are not mentally competent. However, they have the right to have their interests represented by a relative or other guardian, as the case may be, pursuant to the *Infants Act*, R.S.B.C. 1979, c. 196, the *Mental Health Act*, R.S.B.C. 1979, c. 256, the *Young Offenders(British Columbia) Act* and the *Family Relations Act.*

Article 17

202. Letters from provincial inmates destined to the Attorney General, Director of Inspection and Standards, other branches of the Correction System, or the Ombudsman are not to be opened and viewed by prison officials according to section 42(1) of the *Correctional Centre Rules and Regulations 1986.* Police records are not available to the public and can be used only by authorized agencies for the purposes of security clearance or investigation of violations against the law. In addition, the identity of young offenders (aged 12 to 17 inclusive) is protected by the *Young Offenders (British Columbia) Act.*

203. Section 10 of the *Credit Reporting Act*, R.S.B.C. 1979, c. 78, formerly the *Personal Information Reporting Act*, S.B.C. 1973, c. 139, restricts the disclosure by a reporting agency of a person's personal and financial records. Such information may only be disclosed to a person who the agency has reason to believe intends to use the information for prescribed purposes, including employment, business transactions, credit, tenancy agreements, insurance and other areas of consumer eligibility. Section 14 of the Act provides access to an individual's own file.

Article 18

204. Section 11 of the *Industrial Relations Act*, S.B.C. 1979, c. 212 (formerly *Labour Code of British Columbia*), permits individuals to apply to the Industrial Relations Council for exemption from union membership on religious grounds, where union membership is required as a condition of employment. A recent change to section 11 permits individuals to apply to have deductions from their wages, normally intended to pay union dues, redirected to a charitable organization.

Articles 19 and 20

205. On the issues of freedom of expression and hate literature, a significant new development has been the *Civil Rights Protection Act* discussed under article 5.

206. Film content is addressed in the *Motion Picture Act*, S.B.C. 1986, c. 17. This Act provides for advertisement warnings and age-restricted admittance to sexually explicit or excessively violent films and for removal or erasure of portions of films depicting coercive sexual behaviour or brutality. The Act also regulates distribution and rental of video cassettes, and provides an appeal board whereby a filmmaker can appeal a classification decision.

Article 22

207. In 1987, the *Labour Code of British Columbia* was reviewed and significantly revised under a new title -- the *Industrial Relations Act*. The revisions were intended to provide a wider range of dispute resolution alternatives and to provide a means of protecting the public interest from the effects of a work stoppage. More protections are provided for individual free speech on the worksite and limitations are placed on the extent to which a union can discipline its members.

208. Certification of a union bargaining unit was addressed in 1984 amendments (continued in current legislation) which ensured that all affected employees must be given an opportunity to vote on representation by the union. A mandatory vote also applies in applications for decertification of a bargaining unit.

Article 23

209. The *Family Relations Act* has been revised since the first report and outlines in some detail the rights and obligations of parents, spouses, and children. Section 2 of the Act provides for the appointment of a family advocate to represent a child in proceedings such as adoption, guardianship and custody. Sections 21-42 contain provisions for child custody, access and guardianship in the case of marriage breakup or death of the parents. Parental

obligations to support a child are specified, as are the obligations of an adult child to support dependent parents.

Article 24

210. Provisions of the previous *Protection of Children Act* have been transferred to the *Family Relations Act*. Custody of neglected or mistreated children is now assigned to the Superintendent of Family and Child Services, who has the duty to provide appropriate foster care. Financial support of a child in care is the responsbility of the parents at a rate set by the court and established in relation to the parents' ability to pay. Section 29 of the *Family Relations Act* provides for appointment of a Public Trustee to manage the assets of a child under age 19 whose parents have died.

211. The *Infants Act*, R.S.B.C. 1979, c. 196, provides a young person with the right of consent to medical treatment (i.e. without needing parental consent) at age 16. The Act also outlines the enforceability of a contract made by a young person under age 19.

212. References in the previous report to the *Provincial Court Act* and the *Juvenile Delinquent's Act* are no longer relevant. The new provincial *Young Offenders (British Columbia) Act* places emphasis on the responsibility of a young offender (aged 12 to 17) for his/her acts in order to protect society from illegal behaviour. A young person is entitled to counsel, and there is a prohibition on publication of the name of the child. A child under age 12 cannot be charged, although someone who counsels such a child to commit a crime is liable to prosecution.

213. The employment of children is now regulated by the *Employment Standards Act*, S.B.C. 1980, c. 10, which prohibits the employment of children under the age of 15 without the permission of the parents and of the Employment Standards Branch. In cases where permission is given, specific guidelines are established under which such employment may take place.

214. Appointment of a deputy Ombudsman to be solely responsible for issues relating to children and youth has recently been announced.

Article 25

215. The *Elections Act*, R.S.B.C. 1979, c. 103, entitles all residents of British Columbia who are Canadian citizens and at least 19 years of age to be registered as voters (section 2), but not those convicted of an indictable offence and still serving a sentence or detained in a mental institution by court order (section 3). Every person who is a registered voter and a resident of the province for the year preceding election day is qualified to be a candidate for election (section 55) except for certain grounds for disqualification relating to illegal acts (section 260).

Article 26

216. The *Legal Services Commission Act* has been replaced by the *Legal Services Society Act*, R.S.B.C. 1979, c. 227, with provisions similar to those outlined in the first report.

Article 27

217. Ethnic, religious or linguistic minorities in British Columbia have the right to enjoy their own culture, practice their religion, or use their own language. Discrimination against such minorities is prohibited by the *Human Rights Act* and the *Civil Rights Protection Act* as discussed under articles 2 and 5. Preservation of the various ethnic cultures of British Columbia's multicultural population is the objective of a special Cabinet Committee on Cultural Heritage and of the Office of the Cultural Heritage Advisor. The Province has also recently established a Cabinet Committee and Secretariat on Native Affairs.

3. MANITOBA

Introduction

218. The *International Covenant on Civil and Political Rights* is a document that is very broadly worded. A strict respect for or interpretation of individual articles may not result in compliance with the spirit of the Covenant in all cases. Therefore, to report on compliance with the Covenant it is necessary to judge compliance with the general purpose and spirit of the Covenant, in addition to compliance with the individual articles.

219. A report on compliance with the Covenant serves three important and distinct purposes. The first is to encourage governments to conduct their business in compliance with the Covenant. The second is to oblige governments to practise thinking about the principles of the Covenant and to be aware of the many, sometimes discrete ways in which governments exercise power over citizens. The third is to hold the government's record up for public examination.

220. The *International Covenant on Civil and Political Rights* is primarily concerned with identifying the ways in which governments exercise power over citizens and ensuring that there are protections for the citizens from an abuse of that power. The Covenant's secondary concern is to ensure that societies are structured so that individual citizens must respect the human and civil rights of other citizens.

221. This report on compliance with the Covenant has five subject headings: (1) extraordinary powers of the government over its citizens; (2) protections of citizens from the abuse of the government's extraordinary powers; (3) measures to ensure respect of rights between citizens; (4) services and programs, in addition to the above measures and protections, designed to enhance the rights of citizens; and (5) measures taken since 1979 to enhance civil and political rights in Manitoba.

222. In a general report of this nature, it is impossible to give anything more than the most general descriptions of the powers, protections, measures, and services that will be referred to.

223. The citations for individual statutes are not given in this report. Manitoba's statutes can be found easily as they are kept alphabetically in the Continuing Consolidation of the Statutes of Manitoba, CCSM. Each act contained in the CCSM shows the date and year that royal assent was given to the act, just below the title. The acts and their amendments can also be found in the annual bound volumes of the Statutes of Manitoba (S.M.).

224. In 1979, Canada's initial report on implementation of the provisions of the Covenant included a 25-page, article-by-article compliance report for Manitoba. In 1983, a supplementary report provided more detail to the report. The present report, different in format from the 1979 report, is essentially an update of that report, although some references that were made or could have been made in the 1979 report appear here. However, this report should be read together with the 1979 and 1983 reports.

225. Manitoba is pleased to present this report, and is proud of its improvement in the past eight years. Manitoba commits itself to continuing to find ways to ensure that the spirit and the letter of the Covenant receive the fullest possible recognition.

1. Extraordinary powers of the Government

226. Extraordinary powers can be put into categories: powers in case of emergencies, powers that deprive physical liberty, powers that restrict freedom of expression, powers that restrict personal relationships, and powers that restrict economic freedom. Almost all government regulation falls into one of the above categories. The choice of which powers to designate as "extraordinary" are determined by subjective estimations of a given power's degree of intrusiveness on a citizen's rights.

A. Emergency powers

227. The powers in this category include many or all of the powers in the categories B, C, D, and E below. The following acts provide the Manitoba Government with special powers in cases of emergencies: *The Emergency Measures Act*, *The Fires Prevention Act*, *The Manitoba Hydro Act*, and *The Manitoba Water Services Board Act*. *The Emergency Measures Act* creates powers that can be invoked by a declaration of civil disaster. After a declaration of civil disaster, the Cabinet may do all things necessary for the protection of persons or property.

B. Deprivation of physical liberty

228. The power to physically confine a person is created for criminal law and health reasons. The criminal law is primarily found in the *Criminal Code*, an act of the Government of Canada, but administered by the provincial Attorney General. Other federal statutes and some provincial offences also permit incarceration. The *Summary Convictions Act* is the most relevant provincial act giving powers to incarcerate. Once incarcerated, federal and provincial legislation controls the treatment of prisoners. The provincial government exercises power over persons imprisoned for less than two years and persons who are awaiting trial. The most relevant provincial act is *The Corrections Act*. Another act that permits confinement is *The Intoxicated Persons Detention Act*, which is designed to allow police to take a person who is intoxicated in a public place to a detoxification centre for up to 24 hours.

229. The confinement of persons for health reasons, or the compulsory treatment of health problems, is another extraordinary power of the government. These powers are found in *The Mental Health Act* and *The Public Health Act*.

C. Restriction of freedom of expression

230. Provisions that might be considered to be restrictions on freedom of expression are found in *The Amusements Act*, *The Petty Trespasses Act*, *The Defamation Act*, *The Civil Service Act*, *The Human Rights Code* and the federal *Criminal Code*. *The Amusement Act* does not censor, but classifies films and restricts access to some films to adults. *The Petty Trespasses Act* permits the communication of true statements (such as pickets demonstrating a strike action is occurring) on any roadway or parking area to which the public normally has access, even if that property is privately owned. *The Defamation Act* restricts the ability to defame other persons. *The Civil Service Act* provides for secrecy by government employees. *The Human Rights Code* restricts hate literature. The *Criminal Code* restricts hate literature and obscene material.

D. Restriction of personal relationships

231. The *Criminal Code* restricts certain conduct between persons, for the purpose of protecting the liberties of individuals who would be harmed by the conduct if it were unrestricted. A simple example is the prohibition of assault. The restrictions extend to the regulation of sexual relations, especially with respect to young persons. *The Child and Family Services Act* also protects children, sometimes with the effect of interfering in family relationships. *The Marriage Act* and the federal *Divorce Act* also prohibit or continue temporarily certain legal relationships despite the wishes of the persons involved.

E. Restriction of economic freedom

232. Most government action can be interpreted as a regulation or limitation of economic freedom. The most significant examples in Manitoba are: the raising of tax revenue under various taxing statutes; taking property without the owner's consent under *The Expropriation Act*; creating obligations on persons to support other persons; and regulation of labour and management relations through various labour statutes. The principal statutes creating support obligations are *The Family Maintenance Act*, *The Testators Family Maintenance Act*, *The Parents Maintenance Act*, and the federal *Divorce Act*. Labour statutes are discussed below as measures to ensure respect of rights between citizens.

233. The government also restricts economic freedom in the interests of conservation. The main relevant acts are *The Environment Act*, *The Natural Resources Act*, *The Farm Lands Ownership Act*, *The Heritage Resources Act*, *The Provincial Park Lands Act*, *The Forest Act*, and *The Crown Lands Act*. The government also regulates the use of property to take into account the interests of the community and neighbours of the property holder. This is primarily accomplished through *The Planning Act* and *The Municipal Act*.

F. Other restrictions

234. While much of government action can be interpreted as restrictive in some sense, there are a few miscellaneous powers exercised by government that should be mentioned here. These are *The Elections Act*, *The Elections Finances Act*, and *The Age of Majority Act*. The first two of these acts regulate who may participate in elections and how money may be used in elections. *The Age of Majority Act* creates significant legal differences for persons younger than the age of majority than exist for older persons.

2. Protections of citizens from the abuse of the government's extraordinary powers

235. By far the most important protections of citizens against the government's abuse of powers is an effective and democratic legislative assembly, a free and active media, and an independent, vigilant judiciary. Together, these protections should place a high value on scrutinizing government action and presenting alternative viewpoints. This is doubly important for the protection of rights of minorities. An unwillingness to expose or criticize abuses if they are known can make even the most explicit guarantee ineffective. The denial for almost a century of the constitutionally guaranteed linguistic rights of the francophone minority in Manitoba is a vivid example of the ineffectiveness of statutory guarantees without the above protections functioning properly. Manitoba is proud to be able to say that those linguistic rights are now being respected.

236. Aside from the protections mentioned above, the most important sources of protection of abuse of government power are the restrictions of government powers that are contained in the empowering statutes themselves. In this respect, all of the statutes referred to above have protections for citizens. Each statute should be referred to for specific detail. The majority of the statutes referred to above provide procedures that must be followed in order for the powers to be exercised. Only the emergency powers do not contain extensive procedures, and these powers are limited by the language used to create the powers.

237. There are a number of additional protections available to prevent abuses of power by the government. The *Canadian Charter of Rights and Freedoms* and *The Manitoba Human Rights Code* are fundamental protections that protect individual rights. *The Jury Act* is an important law to ensure that the right to a trial by jury is protected by procedural safeguards of fair jury selection.

238. The recently enacted *Freedom of Information Act* will provide improved access to government information. *The Legislative Assembly and Executive Council Conflict of Interest Act*, *The Municipal Council Conflict of Interest Act*, and *The Public Schools Act* ensure that locally elected representatives are not acting out of personal financial interest. *The Ombudsman Act* ensures that there is an independent person familiar with the operation of government to assist individuals who are having unsuccessful dealings with some part of the government. *The Proceedings against the Crown Act* creates legal remedies enforceable in the courts where there is a legal dispute between the government and a person.

239. *The Law Enforcement Review Act* provides for challenges to oppressive behaviour of law enforcement officers. The common law actions of malicious prosecution and false imprisonment are other remedies against law enforcement abuses. Further, the Government has recently adopted a policy of compensating persons who have been wrongfully convicted.

3. Measures to ensure respect of rights between citizens

240. There is a wide range of measures that ensure citizens respect the rights of other citizens. These measures generally apply to government as well. The *Criminal Code* provides protection for the most extreme infringements. It remains to be seen how the *Canadian Charter of Rights and Freedoms* might help protect citizens from abuses of other citizens and corporations. *The Human Rights Code*, *The Privacy Act*, *The Defamation Act*, and the common law of tort, especially in relation to negligence, all provide general and basic protections that are not specific to any particular area of activity or relationship. Other principal areas where there are measures to ensure respect of rights between citizens are labour practices, landlord and tenant law, family relationships, and consumer protection.

241. *The Workplace Safety and Health Act*, *The Employment Standards Act*, and *The Labour Relations Act* are the principal laws guaranteeing fair labour practices and workplace health and safety. *The Landlord and Tenant Act* is the principal law to ensure that landlords and tenants understand their rights and obligations, and respect the rights and obligations of the other. *The Public Health Act* and municipal by-laws also operate to ensure workplaces and residences meet basic health standards.

242. *The Child and Family Services Act*, *The Marital Property Act*, *The Family Maintenance Act*, *The Parents' Maintenance Act*, *The Testators Family Maintenance Act*, *The Dower Act*, *The Infants' Estates Act*, and *The Devolution of Estates Act* all have measures to

ensure that family members understand and fulfil their obligations as family members, and respect the rights of others in the family.

243. The principal measures that protect consumers are *The Sale of Goods Act*, *The Consumer Protection Act*, and provisions in laws that create professional associations that ensure that professionals act ethically and provide their best service to the public. *The Discriminatory Business Practices Act* provides that businesses may not refuse to enter into contracts because of personal attributes (for example race, religion, sex, national origin) of persons associated with a contracting party, and businesses may not enter into contracts that require them to discriminate on grounds of personal attributes.

4. Services and programs, in addition to the above measures and protections, designed to enhance the rights of citizens

244. In addition to all of the above measures, there are a number of services, programs, and laws that the government can offer to enhance the political and civil rights of citizens. The measures are not in response to any extraordinary power or any abuse of rights by government or other citizens, but are rather a recognition that basic, accessible services enhance the ability of all citizens to enjoy and exercise their political and civil rights.

245. There are four fundamental measures that are essential to make civil and political rights meaningful. These are the provision of acceptable standards of health care, income assistance, legal assistance, and education to all persons in a society, without discrimination and without individual ability to pay being a barrier to enjoying the basic standards set. For these measures, it is the society's ability to pay that determines the standards that can be offered.

246. The Manitoba Health Services Commission is one part of Manitoba's program of providing health care to all persons, without requiring payment before the health care is provided. *The Social Allowances Act* is a major part of the provision of social assistance. *The Legal Aid Services Society of Manitoba Act* is the foundation for the provision of legal assistance to those unable to pay for legal assistance by themselves. *The Public Schools Act* is the cornerstone of the provision of education to all children. For post-secondary students, there is a program of student financial aid.

247. It is recognized that poverty, inadequate health care, lack of education, and restricted access to independent, legal assistance creates conditions that make the existence of abstract political and civil rights meaningless.

248. In addition to the above fundamental measures required to give meaning to political and civil rights, there are a number of other services that exist in Manitoba that greatly enhance the ability of Manitobans to enjoy and exercise their rights.

249. *The Workers Compensation Act*, *The Criminal Injuries Compensation Act*, and *The Manitoba Public Insurance Corporation Act* all create mechanisms and funds that reduce the effects of accidents to individuals.

250. *The Crime Prevention Foundation Act* and *The Justice for Victims of Crime Act* create mechanisms and funds to assist in crime prevention and in providing services to crime victims.

251. The Government has adopted a policy of affirmative action in its hiring practices to help ensure that the public service is reasonably representative of the composition of the public. *The Pay Equity Act* ensures that there is equal pay for work of equal value in the public service.

252. Manitoba has many programs and laws designed to protect and promote Manitoba's heritage and multiculturalism. Important funds for these and other purposes are raised by the Manitoba Lotteries Foundation, which operates or controls all lotteries, bingos, and casinos in Manitoba.

253. Manitoba has a policy of increasing access to law. In addition to legal aid, there is, among other services, the Community Legal Education Association, and court enforcement of family maintenance and child custody orders.

5. Measures taken since 1979 to enhance civil and political rights in Manitoba

254. Manitoba has been extremely active in the past eight years in finding innovative ways to enhance rights, and in redressing past omissions that made rights vulnerable. This part of the report will discuss firstly a number of measures that correspond with three or more articles in the Covenant, followed by a brief discussion of measures that correspond with individual Covenant articles.

255. The most important new measure in Manitoba for improved compliance with the Covenant is the new *Human Rights Code*. This Act was enacted in the summer of 1987. It improves the previous *Human Rights Act* by improving the definitions of prohibited grounds of discrimination. For example, pregnancy is now expressly recognized as a prohibited ground of discrimination. So too is harassment based on any of the prohibited grounds. Sexual orientation is a prohibited ground of discrimination. Developments in case law have been incorporated into the Act, and the members of the Human Rights Commission are more protected from political interference with their appointments. The new Act enhances Manitoba's compliance with articles 2, 3, 5, 18, 19, 20, 24, 26 and 27.

256. *The Charter Compliance Acts*, 1985, and 1986, improved Manitoba's compliance with the *Canadian Charter of Rights and Freedoms* protections from unreasonable search and seizure. *The Charter Compliance Act* of 1987, *The Equal Rights Statute Amendment Act* of 1985, and *The Equality of Status Act* of 1982 are all acts which improve Manitoba's compliance with the *Canadian Charter of Rights and Freedoms*' protection of equality. These acts correspond with the large majority of Covenant articles. These amendments were made by identifying conflicts and rectifying them, rather than waiting for individual sections to be challenged in courts.

257. *The Discriminatory Business Practices Act* (1987), mentioned above, restricts the ability of businesses to refuse to enter into contracts for discriminatory reasons, and restricts the ability of businesses to demand or accept discriminatory conditions as part of a contract. This Act corresponds to articles 2, 3, 5, 18, 26, and 27.

258. Manitoba has taken a number of other steps to reduce discrimination under articles 2, 3, and 26 of the Covenant. One such step was to prohibit discrimination on the basis of sex for different rates or benefits under pension or insurance plans. Automobile insurance premiums and drivers' licences no longer discriminate based on age or sex. As of April 1,

1988, the minimum wage of persons under 18 will be the same as that for older persons. *The Social Allowances Act*, amended in 1984, no longer discriminates between single mothers and single fathers. *The Employment Standards Act*, amended in 1985, has extended unpaid paternity leave to six weeks and unpaid adoptive leave to seventeen weeks (unpaid maternity leave was already seventeen weeks). The reason for the above changes is that Manitoba has adopted the philosophy that statistical generalizations do not justify differential treatment of individuals, who may or may not be or become part of the statistical norm.

259. *The Emergency Measures Act* (1987) is a major revision of the previous Act. It eliminates reference to war emergencies, as these are dealt with by federal legislation. The Act requires greater planning and training by municipalities as a precaution against civil disaster, and the Act makes it possible for an emergency to be declared more quickly than at present. The Act relates to Covenant articles 4, 8, and 12.

260. *The Child and Family Services Act* (1985), *The Family Maintenance Act* (1978) and *The Child Custody Enforcement Act* (1982) all deal with family relationships. *The Child and Family Services Act* reorganized Manitoba's system of providing aid and protection to children, and created new family services in Manitoba. *The Family Maintenance Act* strengthens the obligations to support one's family and strengthens the enforcement of court ordered family support. *The Child Custody Enforcement Act* strengthens the enforcement of court orders concerning custody of children. Each of these measures corresponds to Covenant articles 17, 23, and 24, and *The Family Maintenance Act* also relates to article 11.

261. Manitoba has created a child abuse registry to help protect children. The registry is composed of the names of persons thought to be child abusers and the names of child abuse victims. A person whose name is included on the registry is notified of the inclusion and has a right to appeal that inclusion. The purpose of the registry is to assist employers who provide services for or care of children to assure themselves that they have not hired child abusers.

262. Other measures relating to family relationships and child protection include *The Community Child Day Care Standards Act* (1982) and *The Infants Estates Act* (1985). These measures relate to articles 17, 23 and 24. Also, substantial revisions to the following acts have recently been passed: *The Marriage Act* (1983), *The Vital Statistics Act* (1983), and *The Change of Name Act* (1987). These acts affect family relationships and article 16's right to recognition as a person before the law. *The Family Maintenance Act*, by an amendment in 1983, eliminates all distinctions in law concerning illegitimate children.

263. The following references are to new measures that relate to one or two of the articles in the *International Covenant on Civil and Political Rights.*

264. Among other things, article 1 deals with the right of self-determination. In this regard, the *Constitution Act, 1982* provides for constitutional conferences on issues relating to aboriginal peoples, including the identification and definition of aboriginal rights. The conferences have, so far, resulted in failure, and no more conferences are presently scheduled. Manitoba has been and continues to be a strong advocate for aboriginal rights, for conferences to produce results in respect of those rights, and for significant development of the concept of Native self-government. The Manitoba cabinet also has a Minister without portfolio responsible for Native affairs, and a Native Affairs Secretariat to advise cabinet.

265. *The Justice for Victims of Crime Act* (1986) and *The Crime Prevention Foundation Act* (1987) are related to preventing the breach of rights of citizens and to providing effective remedies and services after any such breach. Both acts are the first legislation in Canada on these subjects. These acts correspond to article 2.

266. *The Pay Equity Act* (1985) ensures that Province of Manitoba employees receive equal pay for work of equal value. This is especially important for the promotion of equality of women in the workplace. *The Manitoba Advisory Council on the Status of Women Act* (1987) is designed to promote the equality of women in society. These acts relate to articles 2 and 3 of the Covenant.

267. In addition to the extensive services and protections to ensure an adequate standard of living for all Manitobans that existed in 1979, there are several new measures to further enhance the basic standard of living. A good example is *The Jobs Fund Act* (1984) which provides for provincial contributions to employers who create new jobs. This is one reason why Manitoba consistently has one of the lowest unemployment rates in Canada. *The Residential Rent Regulation Act* (1982) ensures that accommodation costs do not increase unduly over short periods of time. These measures relate to article 6, as they are important to providing the necessities of life.

268. *The Human Tissue Act* and *The Mental Health Act* have both been substantially amended and improved in 1987. These measures relate to Covenant articles 7 and 9, and *The Mental Health Act* also relates to article 10. These articles deal with rights to liberty and protection from medical experimentation. The acts allow for compulsory medical treatment in certain exceptional circumstances, and for consent for body parts to be used in different ways after one's death.

269. *The Law Enforcement Review Act* (1983) provides important new measures for persons to present claims of harassment or abuse by peace officers. This Act relates to Covenant articles 9 and 10. The Attorney General announced a government policy in 1986 that would compensate persons wrongfully imprisoned. Article 14(6) of the Covenant was a major factor in the introduction of this policy, and there has already been one payment made under the policy. The policy also relates to article 9 of the Covenant. *The Jury Act* (1983) is a substantial revision and further enhances rights to a fair trial under articles 9 and 10 of the Covenant. The Department of the Attorney General will soon be introducing legislation that deals with the treatment of young offenders, in compliance with articles 10 and 14.

270. The right to freely choose a residence and to have free movement under Covenant article 12 is limited by conservation and environmental measures. New legislation includes *The Farm Lands Ownership Act* (1983), *The Manitoba Habitat Heritage Act* (1985), *The Heritage Resources Act* (1985), *The Transportation of Dangerous Goods Act* (1983), *The Ecological Reserves Act* (1981), *The Wildlife Act* (1980) and *The Environment Act* (1987).

271. Manitoba has been especially active in improving the ability of its citizens to find and understand the law. This is important for article 14, but also for the ability to enjoy to the fullest all civil and political rights. Manitoba has significantly improved the drafting and publication of its regulations. Manitoba has significantly improved court organization in the province. Manitoba has continued its strong legal aid program. Manitoba has expanded legal education by the creation of the Community Legal Aid Association in 1985. Better

court organization, procedure, and accessibility, simpler laws, and greater community education continue to be important goals of the Manitoba Government, and further improvement in these areas can be expected in the near future.

272. Article 17 of the Covenant addresses itself to privacy. In 1987, Manitoba signed agreements with the Canadian Security Intelligence Agency and with federal correctional institutions to provide those agencies with access to provincial information. The agreements formalized a long-standing tradition of sharing information with such agencies. The citizens of Manitoba benefit from the existence of formal agreements and information request procedures because it enables the Government to have a much improved knowledge of and control over information that is being requested and supplied to these agencies. Furthermore, in the case of information provided to the correctional institutions, one of the principal purposes for this agreement is to allow the correctional institutions to release information to inmates concerning information about themselves contained in the files of the institution, even if that information's source is the Province of Manitoba.

273. Article 25 of the Covenant deals with the right to take part in public affairs. Article 21 deals with the right of peaceful assembly subject only to restrictions required in a democratic society. This implies there is access to government and accountability of government. Aside from the protections that existed in 1979, there have been important new measures created. *The Freedom of Information Act* (1985) is expected to come into force next year. The delay has been caused by the improving of government filing systems so that records can be retrieved once requested. *The Legislative Assembly and Executive Council Conflict of Interest Act* (1983), *The Municipal Council Conflicts of Interest Act* (1983) and 1987 amendments to *The Public Schools Act* are important laws ensuring those involved in public affairs perform their tasks openly and ethically. There have been revisions of *The Election Finances Act* and *The Elections Act* in 1980. *The Act respecting the accountability of Crown Corporations* (1987) and the Office of Expenditure Review, created in 1987, are both designed to give the public greater control over the spending of its money.

274. Article 27 of the Covenant deals with protection of ethnic, religious, or linguistic minorities. In November 1985, the Supreme Court of Canada instructed Manitoba on what was required for compliance with the guarantees to the French-language minority in Manitoba, as set out in the Constitution, in *The Manitoba Act, 1870*. These provisions had not been respected since 1890. Manitoba is now nearing completion of the translations and the implementation of the bilingual procedures that are necessary to comply with the Constitution. Manitoba will soon have fulfilled the instructions of the Court and will be in full compliance with the Constitution.

275. In addition, Manitoba continues to be a strong promoter of multiculturalism. The Manitoba Lotteries Foundation, created in 1982, ensures that profits from gambling in Manitoba are devoted to multiculturalism and to the provision of provincial services. *The Manitoba Intercultural Council Act* (1983) has been enacted to provide advice to the Province on how to promote multiculturalism.

276. In conclusion, Manitoba has been extremely active in the past eight years in adopting measures that significantly enhance the civil and political rights of all Manitobans. Some of the measures have been administrative, others have been legislative. Some of the measures have placed greater limitations on the exercise of extraordinary power, others have provided

citizens with greater remedies against the abuse of government power. Other measures have enhanced the responsibility of citizens to respect the rights of their fellow citizens, while still other measures have increased the range of services that enhance civil and political rights. Some of the measures have corrected past omissions, but most of the measures represent innovative, proactive leadership in improving civil and political rights.

277. The past eight years have produced many measures that are sources of pride for Manitobans, and the Manitoba government continues to commit itself to proactive and innovative action to further improve civil and political rights in Manitoba.

4. NEW BRUNSWICK

278. In Canada's first report, information was provided concerning New Brunswick's legislation that gave effect to the provisions of articles 1 to 27 of the Covenant. This report will update the information, under relevant articles, that has been affected by legislation since the first report.

Article 2

279. Since the first report, a number of amendments were made to the *Human Rights Act*, R.S.N.B. 1973, c. H-11. These include the addition of mental and physical disability as proscribed grounds of discrimination. As well, the Act was amended to include specific protection against sexual harassment.

280. The preamble of the Act states that:

> (WHEREAS) recognition of the fundamental principle that all persons are equal in dignity and human rights without regard to race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status or sex, is a governing principle sanctioned by the laws of New Brunswick.

281. Under the *Family Services Act*, R.S.N.B. 1973, c. F-2.2(1980), adopted in 1980, children have basic rights and fundamental freedoms no less than those of adults. Under the Act, a "child" includes an "unborn child".

282. Beginning in 1983, five omnibus acts have been enacted by New Brunswick with respect to compliance with the *Canadian Charter of Rights and Freedoms*. This comprehensive and exhaustive set of acts affected more than 60 pieces of provincial legislation.

283. With reference to article 2, paragraph 3(*a*), the *Ombudsman Act*, R.S.N.B. 1973, c. O-5, gives to an Ombudsman the power to obtain information pursuant to the *Family Services Act*, the *Archives Act*, R.S.N.B. 1973, c. A-11.1(1977), and the *Right to Information Act*, R.S.N.B. 1973, c. R-10.3(1978). The Ombudsman has the power to verify if an individual has been denied access to information to which he/she ought to be entitled.

Article 3

284. An Advisory Council on the Status of Women allows for an examination and distribution of information to the Government and the public on matters of concern for women. The Council was established under the *Advisory Council on the Status of Women Act*, R.S.N.B. 1973, c. A-3.1(1975).

285. The *Dower Act* and the *Deserted Wives and Children Maintenance Act*, R.S.N.B. 1973, c. D-8, cited in the first report, were repealed and are no longer in effect. However, deserted wives and children maintenance is included in the comprehensive *Family Services Act*.

Article 4

286. The *Emergency Measures Act*, R.S.N.B. 1973, c. E-7, was repealed and replaced with the *Emergency Measures Act*, R.S.N.B. 1973, c. E-7.1. No changes were made affecting the implementation of the Covenant.

Article 6

287. As mentioned above, the "unborn" is considered a "child" and is granted the privileges of a child under New Brunswick law. This is stated in the *Family Services Act*.

Article 7

288. Organ transplants and donations are regulated by the *Human Tissue Act*, R.S.N.B. 1973, c. H-12.

Article 14

289. The *Legal Aid Act*, R.S.N.B. 1973, c. L-2, cited in the first report, did not include the opportunity for a person of modest means to be provided with a solicitor on civil matters. It dealt only with criminal matters. In 1981, civil aid was introduced to New Brunswick and operated until April 1988. It was stopped due to lack of funding.

Article 18

290. The *Lord's Day Act*, R.S.N.B. 1973, c. L-13, was repealed and was replaced with the *Days of Rest Act*, R.S.N.B. 1973, c. D-4.2(1985). This was done to eliminate the discriminatory language of the previous act and to bring it into conformity with the *Canadian Charter of Rights and Freedoms*.

Article 23

291. A new marital property regime is established under the *Marital Property Act*, R.S.N.B. 1973, c. M-1.1(1980). It provides for equality between the spouses without discrimination. For example, in the case of divorce or separation, et cetera, "each spouse, ... is entitled to have the marital property divided in equal shares".

Article 24

292. Major legislative changes were made pursuant to article 24. The *Family Services Act* establishes a comprehensive regime for the protection of children. All aspects of the general welfare of children are covered in the Act and include the mental, emotional and physical health of the child, a secure environment, cultural and religious heritage, and a recognition of the child's views and preferences.

293. A number of acts that were cited in the first report were repealed because of the *Family Services Act*. They include the *Day Care Act*, R.S.N.B. 1973, c. D-4.1(1974), the *Deserted Wives and Children Maintenance Act*, the *Devolution of Estates Act*, R.S.N.B. 1973, c. D-9, and the *Parents' Maintenance Act*, R.S.N.B. 1973, c. P-1, among others.

294. Children born out of wedlock are no longer treated by a different scheme. The term "illegitimate" is no longer used. In this regard, the *Legitimation Act*, R.S.N.B. 1973, c. L-4, and section 30 of the *Marriage Act*, R.S.N.B. 1973, c. M-3, were repealed.

Article 25

295. The *Civil Service Act*, R.S.N.B. 1973, c. C-5, was repealed and replaced with the *Civil Service Act*, R.S.N.B. 1973, c. C-5.1(1984). The Act's anti-discriminatory clause, cited in the first report, was removed. However, people subject to the *Civil Service Act* enjoy anti-discrimination protection under the *Human Rights Act*.

Article 27

296. In 1981, *An Act recognizing the Equality of the Two Official Linguistic Communities in New Brunswick* was adopted. Equal status and equal rights were given to the English and French communities because of the "unique character of New Brunswick". Cultural, economic, educational and social development are promoted in the policies and programs of the Province.

5. NEWFOUNDLAND

Introduction

297. Since Canada's first report in 1979, Newfoundland has enacted various legislation offering guarantees of rights recognized by the *International Covenant on Civil and Political Rights*, details of which follow with reference to the relevant article of the Covenant. Perhaps the most notable change was the coming into force of the *Canadian Charter of Rights and Freedoms* (the Charter) and the *Constitution Act, 1982* on April 17, 1982. Section 52(1) of the *Constitution Act, 1982* provides that any law or governmental act that is inconsistent with the Constitution of Canada, including the Charter is, to the extent of the inconsistency, of no force or effect. Section 15 of the Charter guarantees equality rights which complement and add to the anti-discrimination provisions found in Newfoundland's provincial human rights legislation. That section came into effect three years after the *Constitution Act, 1982* to allow all provinces time to effect legislative changes in accordance with guaranteed rights and freedoms under the Charter. *The Charter of Rights Amendment Act, 1985* was omnibus provincial legislation enacted to amend legislation, clear on its face, violating without justification rights guaranteed in the Charter.

298. Apart from noting the Charter provisions relevant to each article under the Covenant, the implications of Charter provisions will not be addressed as such provisions apply equally to the governments of every province and territory of Canada and to the Government of Canada. Charter rights are only limited to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Article 2

299. In 1979, *The Newfoundland Human Rights Code* provided that no person or class of persons was to be denied admission to or enjoyment of accommodations, services or facilities available in any place to which the public is customarily admitted by reason only of the race, religion, religious creed, political opinion, sex, marital status, colour or ethnic, national or social origin of such person or class of persons. Amendments in 1981 and 1984 added as prohibited grounds of discrimination "phyisical disability" and "mental disability" respectively. The Charter also adds to such protection by enumerating "age" as a prohibited ground of discrimination.

300. *The Blind Persons Rights Act*, enacted in 1981, ensured that blind persons would not be discriminated against in relation to public places or housing because of their blindness or accompaniment by guide dogs. This Act binds the Crown and provides for prosecution of offences and penalties by fine or imprisonment upon conviction of offences under the Act. In 1979, *The Human Rights Anti-Discrimination Act* was passed to remove anomalies in provincial legislation relating to sex discrimination.

Article 3

301. In 1979, *The Matrimonial Property Act* was enacted for the purpose of recognizing contributions made by each spouse in a marriage and to provide for equal sharing of the matrimonial home and deferred sharing of most other property acquired during marriage. This Act was designed to recognize all contributions of each spouse to the marriage, financial or otherwise.

302. Section 28 of the Charter also provides that rights and freedoms are guaranteed equally to male and female persons.

Article 9

303. *The Family Courts Act* was repealed in 1984. Sections 8-11 of the Charter prohibit unreasonable search and seizure, arbitrary detention and unlawful actions by law enforcement agencies. *The Charter of Rights Amendment Act, 1985* amended a significant number of statutes to prevent unjustified searches being made and to ensure compliance with Charter rights.

Article 10

304. In 1984, the *Young Offenders Act* was enacted by the Parliament of Canada. That Act deals with youth charged with *Criminal Code* offences under the jurisdiction of the federal government. About the same time, in relation to provincial offences, *The Young Persons Offences Act* was enacted providing extensively for special treatment for young offenders appropriate to their age and legal status. The needs of young persons and the interests of their families are of prime importance under the Act. The Act provides that youth detained prior to trial or committed to custody shall be held separate and apart from adults.

305. In relation to section 2(*a*) of the Article, prison regulations under *The Prisons Act* provide that prisoners awaiting trial shall so far as practicable be separated from, and kept apart from, convicted prisoners and that they shall not be subject to restrictive provisions of regulations relating to visitation and correspondence.

Article 12

306. Newfoundland law complies with this Article. Section 6 of the Charter provides that every citizen may enter, remain in and leave Canada or any province and take up residence in any province in pursuit of gaining of a livelihood therein.

Article 14

307. Newfoundland law complies with this Article. In particular, provisions in paragraph 1 of this Article are carried out in relation to the exclusion of the public from all or parts of a trial, at the discretion of the presiding judge. *The Charter of Rights Amendment Act, 1985* also repealed reverse onus legislative provisions thereby ensuring the right to be presumed innocent until proven guilty.

Article 17

308. In 1983, Newfoundland enacted *The Privacy Act* dealing specifically with an individual's right to privacy. That Act makes the invasion of privacy actionable without proof of damage in the case where a person willfully and without claim of right violates the privacy of an individual. This Act binds the Crown. The basic defences to such an action under that Act are that matters are of public interest or that actions complained of represent fair comment on a matter of public interest.

309. As well, in 1983, *The Defamation Act* was enacted dealing with defamation (libel or slander) in publications for public benefit, namely newspapers or broadcasts. The Act codifies the right of civil action and common law defences, as well as methods by which damages may be mitigated.

310. *The Unified Family Court Act, The Children of Unmarried Parents Act, The Child Welfare Act* and *The Young Persons Offences Act* provide that a judge may exclude any person other than counsel and a witness from the proceedings if the judge deems that person unnecessary to the conduct of the proceedings. Section 20(1) of *The Young Persons Offences Act* provides that no report will be made public in which the name of the youth appears and section 22 of that Act provides that records of the Youth Court shall not be disclosed unless disclosure is desirable in the proper administration of justice.

Article 23

311. As outlined in comments under Article 3, *The Matrimonial Property Act* enacted in 1979 recognizes all contributions to marriage, financial or otherwise, and provides for equal sharing in the matrimonial home and most other property acquired during marriage.

312. Section 3 of *The Young Persons Offences Act* sets out a declaration of principles to be considered relating to disposition of offences committed by youth. Section 3(8) provides that parents have responsibility for the care and supervision of their children and, for that reason, young persons should be removed from parental supervision either partly or entirely only when measures providing for continuing parental supervision are inappropriate. The dissolution of marriage by divorce under federal jurisdiction provides as well for equality of rights and responsibilities for children for both parents.

Article 24

313. *The Maintenance Act* provides that orders for financial support may be made against either parent to provide for their children. *The Children of Unmarried Parents Act* also provides a method whereby an affiliation order may be made against the putative father of a child, and he may be ordered to pay, on behalf of the mother or child or both, expenses incurred relating to the birth of the child and financial support for a child until the age of 17 or later in limited circumstances.

314. *The Young Persons Offences Act* provides for discretionary alternative measures to be used in relation to offences committed by youth and provides for mandatory alternative measures in relation to children under the age of 12.

Article 25

315. *The Freedom of Information Act* was enacted in 1981 and guarantees the right of access by the public to information in records of government departments subject only to specific and limited exceptions necessary for the operation of the departments and the protection of personal privacy.

316. In relation to the right to vote, *The Elections Act, The St. John's Municipal Elections Act* and *The Municipalities Act* were amended in 1985 to repeal the disqualification of persons held in custody awaiting trial from voting. Section 3 of the Charter provides that

every citizen of Canada has the right to vote in an election of members of the House of Commons or the legislative assembly and to be qualified for membership therein.

Article 26

317. Section 15 of the Charter provides for equality before and under the law and equal protection and benefit of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. The Covenant prohibits discrimination also on the basis of political or other opinion. *The Newfoundland Human Rights Code* supplements the Charter in this area and conforms with the Covenant as political opinion is an enumerated ground of prohibited discrimination in the Code. With the possible exception of very limited circumstances relating to minors, incompetents or illegitimate children, provincial legislation does not infringe the Covenant or unenumerated prohibited grounds such as property, birth or other status.

Article 27

318. Section 27 of the Charter provides that it shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canada. It also guarantees in section 23 protection for minority language educational rights. There is no infringement of the Covenant in relation to the rights of ethnic, religious or linguistic minorities to enjoy their own culture, to profess and practise their own religion, or to use their own language in community with other members of their group, found in any provincial legislation.

6. NOVA SCOTIA

Article 2

319. The *Nova Scotia Human Rights Act*, S.N.S. 1969, c. 11, as amended, now includes protection against discrimination because of mental or physical disability in all facets of public activity, and because of source of income in housing.

Article 3

320. The *Matrimonial Property Act*, S.N.S. 1980, c. 9, is based on the principle that marriage is a partnerhsip of equals and that all matrimonial property acquired before or during the marriage by either or both spouses shall be divided equally between them when the marriage ends.

321. Section 5(4) of the *Family Benefits Act*, S.N.S. 1977, c. 8, providing for assistance to mothers (but not fathers) whose dependent child was born out of wedlock, was struck down by the Appeal Division of the Supreme Court of Nova Scotia in 1986 as unconstitutional. Since then, regulations have been adopted which allow unmarried mothers or fathers to apply for this assistance.

322. *An Act to Provide Pay Equity*, Bill 55, passed the 3rd reading on May 16, 1988. This Act, expected to come into effect on September 1, 1988, will ensure that the public sector employees receive equal pay for work of equal value. This legislation will help in closing the gap between the wages of men and women in the workplace.

323. The *Vital Statistics Act*, R.S.N.S. 1967, c. 330, was revised in 1985 to allow a child to be registered with the surname of either the mother or the father.

Article 4

324. There have been no changes or amendments to the *Emergency Measures Act*, S.N.S. 1967, c. 87. However, a Select Committee on Emergency Measures was established in April 1982 to consider and report with respect to the repeal, revision or amendment of any part of the Act or the regulations thereunder. This Committee presented an interim report in April 1984. The recommended changes will emphasize municipal participation in emergency measures.

Article 7

325. Nova Scotia issued a policy statement on December 10, 1985, on the UN *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.* The Government of Nova Scotia called upon all individuals to make a conscious commitment to the true meaning of this Convention. (A copy of the Policy Statement is attached herewith.)

Article 8

326. Section 13 of the *Court and Penal Institutions Act*, R.S.N.S. 1967, which permitted hard labour, has now been repealed.

Article 9

327. Donald Marshall Jr., a Mic mac Indian who was wrongfully convicted for murder and imprisoned for 11 years, was released in 1982 and was given compensation in the sum of $270,000. The Province has appointed a Royal Commission of Inquiry to investigate the tragic circumstances of his conviction as well as the criminal justice system in Nova Scotia. This inquiry commenced September 9, 1987, and is continuing to date.

Article 10

328. The *Corrections Act*, S.N.S. 1986, c. 6, provides for the safe custody and security and the rehabilitation of offenders and for the integration of offenders into the community while at the same time providing adequate safeguards for the public. Regulations under this Act provide that all persons deprived of their liberty shall be treated with respect for human dignity.

329. The administration of the *Young Offenders Act* (which is federal legislation) is the responsibility of the provinces. Under this Act, young offenders are segregated from adults and treated appropriately to their age and legal status. In Nova Scotia, young offenders aged 12-15 are dealt with through the Department of Social Services while 16-17 year old offenders are dealt with through the Department of the Attorney General.

Article 14

330. The *Young Persons Summary Proceedings Act*, S.N.S. 1985, c. 11, establishes the procedures for dealing with juvenile offenders aged 12-17 who break provincial and municipal laws. It provides for warnings, charges, or an alternative measures program similar to the alternative measures programs under the *Young Offenders Act*. Alternative measures include rendering community service, writing letters of apology to the victims, researching and writing articles on crime and punishment, etc.

331. The Government of Nova Scotia appointed, in September 1987, the first bilingual Provincial Court judge. This will enable French-speaking Nova Scotians to have cases against them conducted entirely in French.

Article 22

332. In 1981, all provincial government employees who previously were members of the Government Employees Association secured the right to form the Nova Scotia Government Employees Union.

333. The *Trade Union Act*, S.N.S. 1972, c. 19, has been amended whereby an employer claiming to be engaged in manufacturing and carrying on its operation at two or more interdependent locations within the province may make an application to the Labour Relations Board of Nova Scotia for determination that the unit appropriate for collective bargaining is the unit consisting of all employees at all such locations.

Article 23

334. The *Solemnization of Marriage Act*, R.S.N.S. 1976, c. 287, now recognizes 19 as the marriageable age. A person under 19 but over the age of 16 may marry with parental

consent. Marriages of persons under the age of 16 shall not be solemnized without special application to a judge of the Family Court who must make the determination that it is expedient and in the interests of the parties to authorize solemnization of the marriage.

335. The *Family Maintenance Act*, S.N.S. 1980, c. 6, provides that the mother and father are joint guardians and are equally entitled to the care and custody of the child. The Act further requires that in any proceeding under this Act concerning care and custody or access and visiting privileges in relation to a child, the court shall apply the principle that the welfare of the child is the paramount consideration.

Article 24

336. Under the *Children's Services Act*, S.N.S. 1976, c. 8, an agent, where there is reasonable and probable grounds to believe that a child is in need of protection, or is likely to become a child in need of protection, can apprehend that child without notice.

337. An agent under this Act shall appear before a family court judge within 21 days to give reasons for the removal of the child allegedly in need of protection. The court shall apply the principle that the welfare of the child is the paramount consideration in any action taken under this Act.

338. Any person who has reasonable and probable grounds to believe and believes that a child is in need of protection shall forthwith report the matter to child welfare authorities. A person who fails to do so is guilty of an offence under this Act.

Article 25

339. The *House of Assembly Act*, R.S.N.S. 1967, c. 128, was amended in 1986. According to the amendment, when a member of the Legislative Assembly is convicted of an indictable offence that is punishable by imprisonment for a maximum of more than five years, the member forthwith ceases to be a member of the Assembly. The amendment also provided that such a person cannot be nominated as a candidate or be elected as a member of the House for a period of five years from the date of conviction. This legislation was challenged by a member of the Legislative Assembly who had pleaded guilty, before the enactment of the amendment, to an offence punishable by imprisonment for more than five years. The Supreme Court of Nova Scotia held that it is a serious matter to take away a democratic right retroactively and held that the prohibition is not demonstrably justified in a free and democratic society. Accordingly, the expelled member was eligible to be nominated as a candidate and at the by-election was returned to the Legislative Assembly.

340. The *Civil Service Act*, S.N.S. 1980, c. 3, was amended in 1986 to allow employees to be candidates at federal or provincial elections, to engage in partisan work in connection with such elections, and to contribute money for a candidate or a political party.

Article 27

341. The *Education Act*, R.S.N.S. 1967, c. 81, was amended in 1981 to provide for the designation of schools as Acadian where the number of French-speaking students attending the school warrants such action. In areas where there is a sufficient number of children whose first language learned and understood is French, public funds are to be provided for instruction to be carried out in the French language.

GOVERNMENT OF NOVA SCOTIA POLICY STATEMENT ON THE UNITED NATIONS CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The Government of Nova Scotia considers that recognition of the equal rights of all members of the human family is the foundation of freedom, justice and peace in the world.

The Government of Nova Scotia is committed to the promotion of universal respect for, and observance of, human rights and fundamental freedoms. Both Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights state that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

The Government of Nova Scotia is desirous of making more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world. All Nova Scotians recognize with pride the invaluable role of Amnesty International in the vanguard of this epic struggle in all parts of the globe.

The Government of Nova Scotia asks that each and every individual of our province make a conscious commitment to the true meaning of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Hon. John M. Buchanan, P.C., Q.C.,
Premier of Nova Scotia.

7. ONTARIO

342. This report sets out the measures adopted and changes which have occurred since the preparation of Canada's first Report on Implementation of the Provisions of the *International Covenant on Civil and Political Rights* (March 1979). This information serves to update the material found in Ontario's portion of Canada's first Report and Canada's 1983 Supplementary Report.

Article 2

Equality Rights Statute Law Amendment Act, 1986

343. The *Equality Rights Statute Law Amendment Act, 1986*, S.O. 1986, c. 64, amends 69 statutory provisions in order to bring them into conformity with section 15, the equality rights provision, of the *Canadian Charter of Rights and Freedoms*, and the (Ontario) *Human Rights Code, 1981*, S.O. 1981, c. 53, as amended.

344. The major changes to the *Human Rights Code* are: adding sexual orientation to the list of prohibited grounds of discrimination; clarifying that the right to equal treatment because of sex includes the right to equal treatment because a woman is or may become pregnant; repealing the exemption which permitted discrimination on the basis of sex in athletics; amending the constructive discrimination provisions to provide that a reasonable and *bona fide* requirement will only be found where the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs. Cost, outside sources of funding, and health and safety requirements are to be considered in making this determination.

345. Changes made to other Ontario statutes remove discrimination on the basis of age, sex, marital status, religion and physical and mental disability.

Article 3

Pay Equity Act, 1987

346. Bill 154, *An Act to provide for Pay Equity*, received Royal Assent on June 29, 1987. The *Pay Equity Act* applies to the government, all public sector employers and those employers in the private sector employing ten or more employees. Each employer must ensure that workers in predominantly female occupations receive pay equal to that enjoyed by workers in predominantly male occupations in the employer's establishment, where the work is of comparable value, based upon a composite of skill, effort, responsibility and working conditions.

347. A pay equity plan, setting out the comparisons and the necessary wage adjustments, must be prepared where the employer has 100 or more employees. If the establishment is unionized, the employer and the bargaining agent are required to negotiate the plan.

348. Once a pay equity plan has been prepared, the employer must post it in the workplace for employees to see. All parties to the plan are given an opportunity to file objections to it with the Pay Equity Commission. In addition, any party may complain to the Commission with respect to violations of the pay equity plan, its continued

appropriateness and any other contraventions of the Act. Objections and complaints will be investigated by a pay equity review officer who will attempt to resolve them by settlement or order. The review officer's order may be appealed to a Hearings Tribunal.

Article 4

The Emergency Plans Act

349. The *Emergency Plans Act*, S.O. 1983, c. 30, provides for the formulation and implementation of emergency plans. "Emergency" is defined as a situation caused by the forces of nature, an accident, an intentional act or otherwise that constitutes a danger of major proportions to life or property. An emergency may be declared by the head of the Council of a municipality or by the Premier of Ontario.

350. The Act empowers the Premier or the head of a municipality, following the declaration of an emergency, to take such actions as she or he considers necessary and are not contrary to law to implement the emergency plans and to protect property and the health, safety and welfare of the public.

Article 6

351. The Ontario Health Insurance Plan (OHIP) is a comprehensive provincial government-sponsored plan of health insurance for Ontario residents. It provides a wide range of benefits for medical, hospital and certain other health practitioners' services. All residents of Ontario -- regardless of age, state of health, or financial means -- are entitled to free service under OHIP for a small monthly premium. The *Health Care Accessibility Act*, which became law in 1986, prohibits doctors from charging patients more than the amount payable under the Plan.

352. The *Ontario Drug Benefit Act, 1986*, S.O. 1986, c. 27, provides that the Ministry will pay for the purchase of specified drugs to eligible classes of persons requiring drugs. The listed drug products are designated under the Regulation to the Act. Those eligible to receive drug benefits are persons who are eligible for pensions under the *Old Age Security Act (Canada)*, persons who are 65 years of age and resident in Ontario for at least 12 months, persons receiving extended care or home care services that are insured under OHIP, and persons who are eligible for drug products under the *Family Benefits Act*, R.S.O. 1980, c. 151.

Article 7

Mental Health Act

353. Under the Ontario *Mental Health Act*, R.S.O. 1980, c. 262, as amended to date, any patient, including an involuntary patient, has the absolute right to refuse any psychiatric treatment unless a finding of incompetency to consent to treatment is made. A patient who is found not competent to make treatment decisions can apply to the review board to challenge the doctor's finding. This decision can be appealed to the court. In addition, a patient who is over 16 and competent to do so has the right to appoint a representative who can make treatment decisions on his or her behalf.

354. An involuntary patient, or the authorized substitute decision maker where a patient is considered incompetent, cannot consent to psychosurgery. Further, a competent patient, or a patient's proxy, can absolutely refuse electroconvulsive therapy. This refusal cannot be overridden.

Human Tissue Gift Act

355. The *Human Tissue Gift Act*, R.S.O. 1980, c. 210, regulates *inter vivos* gifts of human tissue for transplants and post-mortem gifts for transplants and other purposes. A consent form has been attached to each Ontario driver's licence since 1975. Where a deceased has made no prior arrangements, or when a person is, in the opinion of a physician, incapable of giving a consent by reason of injury or disease and his or her death is imminent, a consent may be obtained from the next-of-kin for the donation of organs after death. A physician who took part in the determination of the fact of death of the donor cannot participate in any way in the transplant procedures. The Act makes it unlawful to buy, sell, or deal in bodies, tissue or body parts.

Child and Family Services Act, 1984

356. The paramount objective of the *Child and Family Services Act, 1984*, S.O. 1984, c. 55, is "to promote the best interests, protection and well-being of children". Section 96 of the Act prohibits the detention of children in locked premises when services are being provided to them, unless a child has been committed by a court order to a secure treatment program under Part VI (Extraordinary Measures) of the Act.

357. The use of intrusive procedures and the administration of psychotropic drugs will be subject to the criteria and procedures (including consent) contained in Part VI. Provision is made for a review team to approve the use of an intrusive procedure in respect of a child and review the use of psychotropic drugs.

Article 9

Mental Health Act

358. Procedures concerning involuntary committal to a psychiatric facility in Ontario are outlined in the *Mental Health Act*, as amended.

359. In order to be involuntarily detained as a patient in a psychiatric facility in Ontario, there must be the written opinion of at least one physician in a psychiatric facility that the committal criteria have been met. Those criteria are that the attending physician must be of the opinion both:

(a) that the patient is suffering from mental disorder of a nature or quality that likely will result in,

(i) serious bodily harm to the patient,
(ii) serious bodily harm to another person, or
(iii) imminent and serious physical impairment of the patient,

unless the patient remains in the custody of a psychiatric facility; and

(b) that the patient is not suitable for admission or continuance as an informal or voluntary patient.

360. Once a person is involuntarily committed, that person must receive written notice of this fact, the reasons therefor, and be informed of the right to retain and instruct counsel without delay. The local director of the Legal Aid programme is also notified. Further, the document also notifies the patient of his or her right to a hearing before the Review Board to ensure that the committal criteria have been properly met. The legal onus at such a hearing is on the attending physician and/or the psychiatric facility.

361. Once the Review Board receives notice of the request for a hearing, the hearing must begin within seven days, unless adjourned with the consent of all parties. Within one day after the hearing is completed, a decision must be issued. Within two days of making the decision, the Review Board must provide written reasons for its decision to all parties, including the patient. Because of the regular time intervals which limit the life of certificates of involuntary committal and renewal certificates, a patient civilly committed in Ontario has the right to such a hearing reviewing his or her involuntary status four times in the initial six and a half months period of detention. Thereafter, a patient or someone on his behalf, can initiate a review every three months. The Act also has a scheme whereby automatic status reviews are held at certain legislated intervals. These automatic reviews cannot be waived.

362. Each time a subsequent certificate of involuntary committal is executed, a psychiatric examination of the person must take place.

363. The Review Board is composed of at least one lawyer, one psychiatrist and one person who is not a member of either of those professions.

364. The patient has a right to appeal the decision of the Review Board confirming a certificate of involuntary committal (or a renewal certificate) to the District Court of Ontario. A further right of appeal lies to the Ontario Court of Appeal.

365. A child who is 12 years of age or older but less than 16 and who is an informal patient in a psychiatric facility may apply to the Review Board to consider whether that child needs treatment in the facility.

366. Notices are sent to the local legal aid office and duty counsel sent out to advise the patient of his or her rights in the following circumstances:

1. when a certificate of involuntary admission or renewal is completed;

2. when a physician decides that a patient is not mentally competent to consent to treatment, to examine or authorize disclosure of a clinical record or to manage his or her estate;

3. when, at three-month intervals, a child aged 12 to 15 is being treated as an informal patient in a psychiatric hospital; and

4. when a physician applies to a Review Board for an order authorizing the giving of specific psychiatric or other medical treatment to a patient.

Article 10

Ministry of Correctional Services Act

367. In Ontario, young offenders are kept separate and apart from adults as required by section 7 of the federal *Young Offenders Act*, S.C. 1980-81-82, c. 110, as amended.

368. In general, Ontario separates convicted and accused persons. The Ministry of Correctional Services operates three types of adult detention facilities. These are jails, detention centres, and correctional centres. Generally, those persons awaiting trial are held in local jails and detention centres. Once sentenced, prisoners are then transferred to correctional centres to serve their period of incarceration.

369. While there are no remanded prisoners in correctional centres, there are, however, sentenced prisoners in jails and detention centres. These would include, for example:

1. sentenced prisoners awaiting transfer to correctional centres or penitentiaries;

2. inmates serving sentences while on remand at the same time;

3. sentenced inmates being held under judges' orders to appear as witnesses at various types of proceedings;

4. parole and mandatory supervision violators awaiting hearing before the Ontario or National Parole Board;

5. persons serving very short sentences.

Article 17

Freedom of Information and Protection of Privacy Act, 1987

370. Bill 34, which received Royal Assent on June 29, 1987, provides a right of access to information under the control of a Ministry of the Government of Ontario or other bodies designated as institutions, and protects the privacy of individuals with respect to personal information held by those institutions. Part I allows for the appointment of an Information and Privacy Commissioner. Part II provides for a right of access to government records subject to a variety of specified exemptions. It also deals with the procedure in seeking and providing access as well as setting out time limits imposed on institutions for answering requests and providing information. There are provisions protecting third parties whose privacy might be affected by the release of information, as well as provisions requiring government institutions to assist the public by providing information on the workings of the institutions and how to request information under the Act.

371. Part III regulates the collection, use and disposal of personal information towards protecting individual privacy. Personal information is to be organized into indexed data banks accessible to individuals who may request correction of personal information. Part IV sets out an appeal procedure from certain decisions under the Act by a person who requested access to a record or personal information. There is a provision for mediation authorized by the Commissioner, failing which the Commissioner must conduct an inquiry,

at which the onus is on the government institution to prove that the information is exempt from release.

372. The most crucial aspect of the legislation is that the independent Information and Privacy Commissioner, not the Government, will make the final determination with respect to disputes arising under the Act.

Mental Health Act

373. The *Mental Health Act*, R.S.O. 1980, c. 262, as amended, stipulates as a general proposition that no communication written by a patient or sent to a patient shall be opened, examined or withheld, and its delivery should not in any way be obstructed or delayed.

374. There are permissible exceptions to the above-stated general proposition. Where the officer in charge (or a person acting under his authority) has reasonable and probable cause to believe that the contents of a communication written by a patient would be unreasonably offensive to the addressee or prejudice the best interests of the patient, such communication may be opened, examined, and withheld.

375. With reference to communications sent to a patient, the officer in charge (or a person acting under his authority) may open and examine the contents of a communication if he or she has reasonable and probable cause to believe that the contents of the communication would either interfere with the treatment of the patient or cause the patient unnecessary distress.

376. In no situation can a communication written by a patient to, or appearing to be sent to a patient by, a barrister or solicitor, a member of the mental health review board, or a member of the legislative assembly be opened, examined or withheld from delivery.

377. A patient who is 16 years of age or more and is mentally competent is entitled to examine and copy the clinical record relating to that patient.

Article 18

Education Act

378. The *Education Act*, R.S.O. 1980, c. 129, provides for two publicly funded systems, one of which is a public system, and one a Roman Catholic system.

379. No pupil shall be required to take part in religious exercises or instruction in public schools where the parent or the pupil, if an adult, objects. Teachers may also claim exemption from teaching religious education, and the Minister may grant a school board an exemption from the teaching of religious education in any classroom or school.

Article 23

Family Law Act, 1986

380. The *Family Law Act, 1986*, S.O. 1986, c. 4, acknowledges that marriage is an economic as well as a social and emotional partnership. As a consequence, the Act entitles spouses to an equal division of property and assets acquired during the marriage.

381. The special provisions governing the matrimonial home stipulate that each spouse is equally entitled to its possession; therefore, the legal owner cannot force the other to leave. Similarly, neither spouse can sell, lease, mortgage or encumber the home without the other's consent.

382. The support provisions, unlike those dealing with property, extend to common law spouses, who have lived together for three or more years or who are in a relationship of some permanence and have a child. Either spouse may ask for support from the other based on their respective need and ability. Both parents are obligated to contribute toward their children's upbringing to the extent that they are able to do so.

383. In addition, the Act provides that a person may apply to a court to have a spouse or former spouse restrained from annoying, harassing or molesting the other.

Support and Custody Orders Enforcement Act, 1985

384. The *Support and Custody Orders Enforcement Act, 1985*, S.O. 1985, c. 6, established the Support and Custody Orders Enforcement Office which enforces support provisions contained in court orders, separation agreements, marriage contracts and cohabitation agreements. The Office also enforces custody provisions contained in court orders and separation agreements. The Office has a large staff with regional offices throughout the province which provide the enforcement services free of charge to any person entitled to support.

Article 24

385. The protection provisions of the *Child and Family Services Act, 1984*, S.O. 1984, c. 55, apply to all children without discrimination and, in addition, a child's band or Native community has been given new rights under the legislation with respect to children who are Indian or Native people.

Article 27

386. The *French Language Services Act, 1986*, S.O. 1986, c. 45, sets out the requirement that government services be available to the public in French. It applies to head and central offices of government agencies, as well as to local offices in areas designated in the Schedule to the Act, and is to be phased in over a period of three years. The Act also applies to public service agencies as designated by regulation, but does not apply to municipalities or local boards.

387. Other major features of this Act are: a requirement that all public Bills in the Legislature be introduced and enacted in both French and English after January 1, 1991; a requirement that the public general statutes of Ontario be translated into French by the end of 1991; the translation of regulations as determined by the Attorney-General; the establishment for a three-year period of the Ontario French Language Services Commission whose functions, upon dissolution, are to be performed by the Office of Francophone Affairs; and the appointment of a French language services co-ordinator for each government ministry.

8. PRINCE EDWARD ISLAND

Part I: General Update

388. Further advances in this province in the area of civil and political rights include: special legislation to deal with young offenders; amendments to labour legislation to guarantee strikers the right to return to their jobs; and a new statute to protect privacy and property rights by creating a provincial offence of trespass to property.

389. In 1982, many of the rights contained in the Covenant were entrenched in the Canadian Constitution with the enactment of the *Canadian Charter of Rights and Freedoms*. Pursuant to the Charter, the provinces may enact legislation which is to operate notwithstanding several of the Charter's provisions; as noted herein, the Province of Prince Edward Island upholds the rights in question by not exercising its override powers.

Part II: Detailed Annotations

Articles 2 and 3: Enforcement of equality rights

390. The *Human Rights Act*, R.S.P.E.I. 1974, c. H-12.2, and the Commission established pursuant thereto, continue to protect and uphold the principle of equality between and among individuals.

391. A 1985 amendment to the Act extends the prohibition of employment discrimination from "physical handicap" to include "physical *or mental* handicap", and defines this term as

> A previous or existing disability, infirmity, malformation or disfigurement, whether of a physical or mental nature, that is caused by injury, birth defect or illness, and includes but is not limited to epilepsy, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guidedog, wheelchair or other remedial device.

392. Another example of a recent legislative amendment aimed at further promoting equality -- in this case, equality of the sexes -- is the changing of the *Vital Statistics Act*, R.S.P.E.I. 1974, c. V-6, to permit a married couple to register their child in the name of either spouse (S.P.E.I. 1986, c. 20). Previously, a child born to a married couple had to take the father's surname, regardless of the wishes of the couple. The only restriction on this is that all children born to a married couple must be registered in the same surname.

Article 6: The right to life

393. Recent legislative actions which further evidence this province's protection of this right (insofar as it is within provincial jurisdiction to do so) are:

(i) the addition of the disease AIDS and its causative antibody "HIV positive" to the list of diseases which must be reported, upon detection, to the Chief Health Officer (pursuant to the *Public Health Act*, R.S.P.E.I. 1974, c. P-29, and Regulations thereto, enacted in 1985 and 1987, respectively);

(ii) the enactment of the *Drug Cost Assistance Act*, S.P.E.I. 1986, c. 10, which subsidizes prescription drugs for senior citizens;

(iii) the enactment of the *Community Care Facilities and Nursing Homes Act*, S.P.E.I. 1985, c. 9, which regulates a standard of care for persons whose physical or mental faculties are diminished to the degree that they require care;

(iv) the enactment of the *Occupational Health and Safety Act*, S.P.E.I. 1985, c. 36, which establishes health and safety standards in the workplace;

(v) the enactment of the *Dangerous Goods Transportation Act*, S.P.E.I. 1981, c. 9, which regulates the transport of, *inter alia*, explosives, gases, flammable and combustible liquids and solids, and oxidizing, poisonous, infectious, radioactive, or corosive materials. The Act creates offences and prescribes heavy fines for breach of its requirements.

Article 7: Right not to be subjected to cruel treatment, punishment, etc.

394. The *Canadian Charter of Rights and Freedoms*, section 12, provides:

> Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

This right applies to all governmental actions within the province, unless the Province specifically exempts certain statutes or statutory provisions from its effect, and this Province has taken no action to exempt any of its legislation from being subject to this or any other Charter right.

Article 9: Right to liberty and security of the person and rights upon arrest or detention, etc.

395. Again, these are rights which have been entrenched in Canada's constitutional Charter.

396. Sections 7, 9, and 10 of the Charter protect the rights set out in paragraphs 1, 2, 3, and 4 of article 9, and s. 24(1) of the Charter could afford the remedy specified in paragraph 5 of article 9.

397. The Legislature of Prince Edward Island upholds these rights by not exercising its constitutional prerogative to enact legislation exempt from their application.

Article 10: Treatment of prisoners, segregation of juveniles and unconvicted persons, etc.

398. There have been significant developments with respect to the treatment of juvenile offenders.

399. In 1984, the federal government enacted the *Young Offenders Act*, which provides a distinct procedure for prosecuting persons between the ages of 12 and 17 inclusive, and requires that incarcerated young offenders be segregated from adult offenders. This statute

applies to the prosecution of offences created by the federal government (such as *Criminal Code* offences).

400. The Province of Prince Edward Island, in keeping with the policy objectives of both article 10 and the federal *Young Offenders Act*, has, in 1985, enacted a provincial statute with analogous provisions, applicable to the prosecution of offences created by the provincial government.

401. Section 13 of this provincial statute provides:

> A young person who is charged with an offence and detained prior to trial or committed to a place of custody under this Act shall be held separate and apart from any adult who is charged with or convicted of an offence under an Act of the Parliament of Canada or (a provincial) enactment.

402. The provision contained in paragraph 3 of article 10, that juveniles be accorded treatment appropriate to their age and legal status, is advanced by several sections of the provincial *Young Offenders Act*, namely:

- s. 10(2), which enables a young offender's fine to be commuted to community service work;

- s. 11(3), which permits inclusion in a probation order of such terms as requiring the young offender to make reasonable efforts to obtain and maintain suitable employment or to attend school or another place of learning, training or recreation; and

- s. 14, which permits a young person committed to custody to be released for up to ten days, with or without escort, for "medical, compassionate or humanitarian reasons or for the purpose of rehabilitation", or to be released for specific periods to allow the young person to "better carry out employment or improve his education or training".

Article 14: Right to equal treatment, to fair and public hearing, in criminal matters, to private hearings in appropriate cases, to presumption of innocence, to certain rights when charged with an offence, and to appropriate procedures for juvenile offenders, etc.

403. Most of these are also rights which have been entrenched nation-wide, by the *Canadian Charter of Rights and Freedoms* in 1982 (e.g. ss. 11, 13, and 15).

404. As noted *supra*, the right to a separate procedure for juvenile offenders, aimed at rehabilitation, has been protected by recent federal and provincial young offenders acts.

405. The principle, in article 14(1), regarding exclusion of the public from certain hearings, and the ban on publication of judgements in cases involving juveniles, or matrimonial or guardianship disputes, is upheld by the following provincial statutes:

(i) the *Human Rights Act*, R.S.P.E.I. 1974, c. H-12.2, which allows a board of inquiry in a human rights complaint to conduct its inquiry *in camera* where the Minister considers it not in the public interest to hold a public inquiry (s. 25(1.1));

(ii) the *Young Offenders Act*, which allows a youth court to bar the public from a hearing where the judge considers it necessary for the proper administration of order or justice, or in the best interests of the accused young person or a young person who is a witness. This Act also makes it an offence to publish the name of a young offender;

(iii) the *Family Law Reform Act*, R.S.P.E.I. 1974, c. F-2.1, which permits the court to exclude the public from hearings under the Act and to prohibit publication of evidence. (Such hearings would usually involve applications for spousal or child maintenance, or for division of matrimonial property);

(iv) the *Adoption Act*, R.S.P.E.I. 1974, c. A-1, which provides that all proceedings under the Act relating to the adoption of a child shall be *in camera* (s. 25);

(v) the *Custody Jurisdiction and Enforcement Act*, R.S.P.E.I. 1974, c. C-32, which permits the court to exclude the public and prohibit publication of evidence from child custody hearings.

Article 15: Right to be protected from retroactive criminal legislation and/or penalties

406. Again, this is within federal jurisdiction and has been appropriately addressed in the *Canadian Charter of Rights and Freedoms* (s. 11(*g*) and (*i*)).

Article 17: Rights protecting privacy, family, home, reputation, etc.

407. The new *Trespass to Property Act*, S.P.E.I. 1984, c. 37, establishes statutory protections for property owners and occupiers and creates offences for violations of its provisions.

408. Some other examples of legislative protection of the right to privacy are found in the *Addiction Services Act*, R.S.P.E.I. 1974, c. A-01.1 (as amended in 1985), which restricts employees of treatment facilities from divulgence of information regarding persons treated, and in the *Family and Child Services Act*, S.P.E.I. 1981, c. 12, which likewise restricts employees of the public service from communication of information obtained in the performance of their duties.

Articles 18 and 19: Rights of freedom of thought, religion, opinion, expression

409. Since 1982, these rights, too, are part of the Constitution of Canada (s. 2 of the Charter) and are honoured by this jurisdiction. (The Province has not exercised its power to enact legislation which in any way overrides these rights.)

Article 22: Freedom of association, including trade union association

410. Recent amendments to the *Labour Act*, R.S.P.E.I. 1974, c. L-1, further uphold the right to associate within a trade union by providing that employees legally striking or locked out are entitled to be reinstated in their jobs when the strike or lockout is over, and by further providing that the employment of replacement workers is, without notice, deemed to be terminated (S.P.E.I. 1987, c. 39).

411. The right of freedom of association is now guaranteed in the "fundamental freedoms" section of the Charter (s. 2) and is honoured in this jurisdiction.

Article 23: Protection of family unit, right to marry and to found a family, equality of spouses, and provision for protection of children of dissolved marriages

412. This Province continues to enact and improve various remedial legislation aimed at spousal equality and protection of children of separated spouses.

413. As noted *supra*, the *Vital Statistics Act* has recently been amended to no longer require spouses to give their children the surname of the husband.

414. The *Family Law Reform Act*, S.P.E.I. 1978, c. 6, provides that separated spouses have a *prima facie* equal entitlement to family assets. It also permits a spouse to recover money or money's worth contributed to a business asset solely owned by the other spouse, and makes both separated spouses responsible for the support of each other, in accordance with need, and for the support of their children.

415. The *Custody Jurisdiction and Enforcement Act*, passed in 1984, makes both parents joint guardians of a child, and equally entitled to custody, unless otherwise ordered by the court. The Act contains additional provisions for the stated purpose of:

- ensuring that all child custody and access matters are determined on the basis of "the best interest of the child";

- recognizing and avoiding concurrent exercise of jurisdiction by several provincial tribunals in respect of custody of the same child;

- discouraging the abduction of children as an alternative to having custody rights determined by due process; and

- providing for the more effective recognition and enforcement of custody and access orders made in this or another jurisdiction.

416. Similar provisions for the enforcement of extra-provincial support orders were established by the *Reciprocal Enforcement of Maintenance Orders Act*, in 1983 (c. 39).

417. The protection and encouragement of the family unit are upheld in an amendment to the *Labour Act*, which provides for maternity leave for all employees and prohibits dismissal or suspension of an employee for reason of pregnancy (S.P.E.I. 1982, c. 16).

Article 24: Children's right to protection without discrimination, right to a name, and right to acquire a nationality

418. The right to freedom from discrimination based on social origin or birth is upheld by the *Child Status Act*, S.P.E.I. 1987, c. 8, which abolishes any distinction between legitimate and illegitimate children, and which makes a child who is *en ventre sa mère* (i.e. gestating) at the time of its father's death, eligible as a claimant under the *Dependants of a Deceased Person Relief Act*, R.S.P.E.I. 1974, c. D-6.

419. A gestating child's right to freedom from discrimination is similarly protected in the intestate succession provisions of the *Probate Act*, R.S.P.E.I. 1974, c. P-19. It provides that children who, under the Act, are heirs to an estate do not have to have been born by the date of the deceased's death; children in the womb inherit equally with children already born.

Article 25: Right to take part in public affairs, to vote, to have access to public service, etc.

420. The previously existing rights in this area have been supplemented by the enactment of the *Election Expenses Act*, S.P.E.I. 1983, c. 12, which sets limits on the expenditures of a candidate and a party for a provincial election campaign, thereby diminishing the impact of financial resources on the accessibility of public office.

Article 26: Right to equality before the law, to equal protection of the law, and to freedom from discrimination ...

421. The rights upheld in this article are now guaranteed in the Canadian Constitution by the *Canadian Charter of Rights and Freedoms*, s. 15, and the Prince Edward Island Government has reviewed and, where necessary, amended, its statutes to ensure full compliance with the Charter's provisions.

422. The *Charter of Rights (Consequential Amendments) Act*, S.P.E.I. 1987, c. 6, deletes potentially discriminatory language or provisions from several statutes.

Article 27: Right of minorities to their own culture, religion, language ...

423. No legislation of this Province restricts any of these rights, and a recent legislative amendment in furtherance of Charter requirements promotes the language rights of the primary minority group by requiring the school boards, where sufficient numbers warrant the expenditure of public funds, to provide French language education for children of P.E.I. resident Canadian citizens whose mother tongue is French and who have the right to such instruction pursuant to s. 23 of the Charter (*An Act to amend the School Act*, S.P.E.I. 1985, c. 39).

9. QUÉBEC

Introduction

424. The Government of Québec committed itself to complying with the *International Covenant on Civil and Political Rights* by adopting Order in Council 1438-76 on April 21, 1976.

425. The following report contains information on the measures taken by Québec to implement the Covenant since the first report, submitted in 1979.

Part I: General

426. Since 1979, Québec has contributed to the *Supplementary Report of Canada on the Application of the Provisions of the International Covenant on Civil and Political Rights in Response to Questions Posed by the Human Rights Committee in March 1980*, as well as to eleven other reports to various international bodies, as provided for in the other instruments of the United Nations or of the UN's specialized or related organizations, such as the International Labour Organization.

427. In response to the wish of various United Nations bodies for concise reports, Québec will provide information in this report on articles 3, 7, 10, 14(6), 22, 23(2) and 25(*b*) of the Covenant.

Part II: Information on articles 3, 7, 10, 14(6), 22, 23(2) and 25(*b*)

Article 3: Equal right of men and women to enjoy all civil and political rights

428. In December 1982, the Government of Québec passed the *Act to amend the Charter of Human Rights and Freedoms*, which added a Part III to the Québec Charter, authorizing the introduction of affirmative-action programs. In June 1985, by Order in Council 1135-85, the Government proclaimed the 1982 Act in force.

429. Section 86.1 of the Québec Charter reads as follows:

> The object of an affirmative action program is to remedy the situation of persons belonging to groups discriminated against in employment, or in the sector of education or of health services and other services generally available to the public.
>
> An affirmative action program is deemed non-discriminatory if it is established in conformity with the Charter.

430. In 1985, the Québec Human Rights Commission established an Affirmative Action Branch. The staff of this Branch, which consisted of 18 persons, was divided into two sections: Analysis and Standardization, and Development and Implementation.

431. The Analysis and Standardization Section is responsible for establishing data banks on the labour market and on the situation of groups that are discriminated against; it also prepares statistical models supporting data analyses that might result in the development of a program. The Section is also responsible for carrying out analyses of availability.

432. The Development and Implementation Section is the focal point of the Affirmative Action Branch, since it is responsible for advising companies and organizations on the development and implementation of programs. The Section devises instruments (guides, manuals, forms), policies and procedures, and provides assistance to persons interested in developing and implementing an affirmative-action program.

433. In September 1987, the Government of Québec announced its intention of implementing an affirmative-action program for women in the civil service. Its goal is to increase the number of women from 179 to 300 among senior managers (12 percent of the total), from 2,708 to 3,563 among professionals and teachers (27.5 percent), from 115 to 162 among government security guards (7.5 percent) and from 45 to 124 among labourers (3 percent).

434. The Government of Québec also plans to require companies doing business with it to demonstrate that they provide equal opportunities for women, Native people, and visible minorities. The details of this program are the subject of a study that will result in a statement of government policy.

435. Once this measure is implemented, private employers in Québec and the Government, both as an employer and as a client of industry, will become partners in achieving equality for women, Native people and visible minorities in the field of employment.

Article 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment

436. Québec has already committed itself before the international community not to subject anyone to torture or cruel, inhuman or degrading punishment or treatment, first, when, in April 1976, it undertook to comply with the provisions of the *International Covenant on Civil and Political Rights*.

437. On June 20, 1979, the Government of Québec strengthened that commitment by adopting an order in council supporting the UN General Assembly's 1975 Declaration on the Protection of All Persons from Being Subjected to Torture.

438. More recently, on June 10, 1987, the Government of Québec reaffirmed the importance of measures to eliminate torture by declaring itself bound by the provisions of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

Article 10: All persons deprived of their liberty shall be treated with humanity

439. The question of provisions to protect children and young people charged with violating acts or regulations in force in Québec, as well as measures relating to juvenile delinquency, will be dealt with in Québec's section of the second report of Canada on articles 10-15 of the *International Covenant on Economic, Social and Cultural Rights*.

Article 14(6): Compensation of victims of a miscarriage of justice

440. In 1980, the Government of Québec set up a task force to look into the question of compensation of victims of a miscarriage of justice. The task force studied the various

technical aspects, with a view to proposing a formula for implementing the obligation laid down by the Covenant. At the same time, Québec participated actively in a federal-provincial-territorial task force on this subject, which submitted a report and made recommendations.

441. Québec plans to take a legislative approach to this question, and the Minister of Justice intends to table a bill soon in the National Assembly on compensation of victims of a miscarriage of justice.

Article 22: Freedom of association

442. Provisions applicable to public utilities, and especially with regard to the maintenance of essential services, were added to the *Labour Code* in 1982. This question was dealt with in paragraphs 462-463 of the second report of Canada, Québec's section, on articles 6-9 of the *International Covenant on Economic, Social and Cultural Rights*.

Article 23(2): Right to marry and to found a family

443. Québec has adopted new provisions regarding the minimum age for marriage, setting it at 18. However, for constitutional reasons, these provisions have not been proclaimed. In fact, constitutional case law has established that the age requirement for marriage comes under section 91.26 of the *Constitution Act, 1867* (30 & 31 Vict, C.3) and is therefore a federal matter since it constitutes a basic condition of marriage.

444. During federal-provincial negotiations, consideration was given to a proposal to transfer the law respecting marriage from federal jurisdiction to provincial jurisdiction. However, these negotiations have not yet reached a successful conclusion.

Article 25(*b*): Right to vote and to be elected

445. The *Referendum Act* (R.S.Q., c. C-64.1), assented to on June 23, 1978, allows persons incarcerated in houses of detention in Québec to exercise their right to vote in a referendum.

446. This right was expanded by the *Election Act* of December 13, 1979 (R.S.Q., c. E-3.1), which was superseded by the *Election Act* of 1984 (c. E-3.2), allowing such persons to vote in general elections in Québec.

10. SASKATCHEWAN

447. Saskatchewan's submission to Canada's second report under the Covenant will update to August 1987 the information contained in its previous submission.

Articles 2 and 26

448. In 1979, *The Saskatchewan Human Rights Code*, S.S. 1979, c. S-24.1, was proclaimed. It prohibits discrimination in respect of specified rights on the basis of race, creed, religion, colour, sex, nationality, ancestry, marital status, physical disability, age (18-64) and place of origin. *The Bill of Rights Act*, *The Fair Accommodation Practices Act* and *The Fair Employment Practices Act* were consequently repealed. Provisions of *The Bill of Rights* relevant to articles 5, 9, 18, 19, 21, 22 and 25 referred to in the first report are now found in *The Human Rights Code*.

449. Between January 1983 and July 1987, the Human Rights Commission received 760 formal complaints and numerous miscellaneous inquiries. Of the formal complaints, 36 percent alleged discrimination based on sex, 21 percent on race or colour, 2 percent on nationality, 2 percent on religion, 20 percent on physical disability, 5 percent on marital status, 7 percent on age, 7 percent other. Of these, 96 percent were settled by the Commission without a formal inquiry.

450. *The Community Legal Services (Saskatchewan) Act* was repealed in 1983 and replaced by *The Legal Aid Act*, S.S. 1983, c. L-9.1. The Legal Aid Commission recently introduced new guidelines for client contributions towards defraying the cost of legal services.

Article 3

451. The distinctions between widow and widower in *The Dependents Relief Act* and between dependent husband and wife in *The Automobile Accident Insurance Act* have been eliminated.

Article 7

452. *The Mental Health Services Act*, S.S. 1984-85-86, c. M-13.1, which replaces *The Mental Health Act*, prohibits the administration of psycho-surgery or experimental treatment to an involuntary patient.

453. To clarify the statement in the first report that imprisonment under *The Corrections Act* may include treatment as is considered appropriate for the prisoner's rehabilitation, the treatment referred to includes programs such as attendance at drug and alcohol education sessions and use of the family visiting unit.

Article 9

454. *The Mental Health Services Act* provides that a mentally disordered person may be detained involuntarily if two physicians have examined the person and have found that he/she is in need of treatment, care or supervision which can only be provided in an in-patient facility, he/she is unable to make an informed decision regarding the need for

treatment, care or supervision, and is likely to cause harm to himself/herself or others or to suffer substantial mental or physical deterioration if not detained. The person has the right to be informed of the reason for his/her detention, to be assisted by an official representative, and to appeal to a review panel and subsequently to the courts against his/her detention.

Article 10

455. *The Corrections Act* cited in the first report applies only to adults. Pursuant to the requirements of the *Young Offenders Act*, adults and young offenders (aged 12-18) are held in completely separate facilities. However, young offenders on remand are not completely segregated from convicted youths because this would deny them access to programming aimed at education and rehabilitation. Youths serving remand or custodial time for provincial offences are detained in "open custody" facilities as designated under the *Young Offenders Act*.

Articles 13, 14, 15

456. Proceedings against young offenders are held in open court, but youths are protected by restrictions on publication under section 38 of the *Young Offenders Act*. Young offenders who request it are assured legal representation even if parents or the Legal Aid Commission refuse to pay. *The Summary Offences Procedures Act* requires that, where a youth (aged 12-15) has been charged with a provincial or municipal offence, the peace officer shall make reasonable efforts to serve a copy of the Information on the youth's parents.

457. Proceedings under *The Children of Unmarried Parents Act* and *The Family Services Act* in respect of child protection matters are held in closed court.

Article 16

458. Under *The Mentally Disordered Persons Act*, persons may lose their right to manage their financial affairs if they are found by a court to be incapable of managing their financial affairs, and found by a physician to be incompetent and certified incompetent by a chief psychiatrist of a mental health facility. Appeals against certificates of incompetence may be made to a review panel.

Article 17

459. Provisions of *The Vital Statistics Act*, *The Mental Health Services Act* and *The Venereal Disease Prevention Act* restrict disclosure of any information acquired pursuant to the Act.

Article 18

460. An amendment to *The Infants Act*, S.S. 1983, c. I-80, has repealed the section which provided that nothing in the Act changes the law as to the authority of the father in respect of the religious faith in which his child shall be educated. The amendment also removed the court's authority to order that a child be brought up in the religion specified by the non-custodial parent.

Article 19

461. *The Film and Video Classification Act*, which replaces *The Theatres and Cinematographs Act*, gives the Saskatchewan Film Classification Board powers to approve or disapprove films and videos intended for exhibition in Saskatchewan. Grounds for withholding approval include the presence of graphic or prolonged violence and sexual abuse. Decisions of the Board may be appealed to an independent committee.

Articles 21 and 22

462. Sections 25.1 and 36.1 of *The Trade Union Act* were enacted in 1983. They limit the power of trade unions to place restrictions on employees they represent who do not agree with their actions. Employees have the right to fair representation by their union and cannot unreasonably be denied membership in a trade union.

Article 23

463. The prohibition against marriage by a person who is mentally retarded, mentally ill or has a communicable disease has been removed.

464. Rights and responsibilities of spouses during and at the dissolution of marriage are covered by a number of statutes, some provincial and some federal. The *Divorce Act, 1985* deals with divorce, maintenance and custody of and access to children. Provincially, *The Infants Act*, *The Deserted Spouses' and Children's Maintenance Act*, *The Children of Unmarried Parents Act*, *The Queen's Bench Act*, *The Enforcement of Maintenance Orders Act*, and *The Reciprocal Enforcement of Maintenance Orders Act* deal with custody and support. *The Matrimonial Property Act* is the primary provincial vehicle for the division of matrimonial property on marriage dissolution. Pursuant to that Act, there is a presumption of equal sharing of all matrimonial property.

Article 24

465. Maintenance is now available to children and either spouse under *The Deserted Spouses' and Children's Maintenance Act*. *The Enforcement of Maintenance Orders Act* and *The Reciprocal Enforcement of Maintenance Orders Act* ensure that orders for maintenance can be enforced.

Article 25

466. The provision under *The Election Act* disqualifying mentally incompetent persons and members of The Local Government Board from voting has been repealed.

467. Section 80 of *The Labour Standards Act* provides for a leave of absence for an employee who wishes to run for public office, and, if elected, for the term of office.

Article 27

468. *The Department of Parks, Recreation and Culture Act* has replaced *The Department of Culture and Youth Act*.

C. TERRITORIAL GOVERNMENTS

1. NORTHWEST TERRITORIES

469. There have been some changes made to legislation in the Northwest Territories since the first report, and this submission contains comments on such changes. The *Interpretation Act*, R.S.N.W.T. 1974, c. I-3, was amended in 1985 so that the territorial legislative enactments previously called "ordinances" are now called "acts".

470. Significant changes have occurred concerning the respective roles of the Commissioner and the Territorial Council. While the *Northwest Territories Act* has not been amended in this regard, the practice has changed so that the Commissioner's role is now much more similar to that of the Lieutenant Governor, and the elected Territorial Council, now called Legislative Assembly, and its Executive Council fill roles comparable to those of a provincial legislature and cabinet.

Article 2

471. The current procedure under the *Fair Practices Act*, R.S.N.W.T. 1974, c. F-2, is that an individual may make a complaint to an officer appointed by the Minister (of Justice). The officer inquires into the complaint and endeavours to effect a settlement. If no settlement is effected, the officer submits a report and recommendations to the Minister, and the Minister makes whatever order he/she sees fit.

Article 3

472. To clarify the statement in the first report that the Northwest Territories has no provision in its *Fair Practices Act* to prohibit discrimination on the basis of sex with respect to appointments to the Territorial Public Service, the *Canadian Human Rights Act* applies to the Territorial Public Service, and therefore no such provision is necessary.

Article 5

473. The *Fair Practices Act* was amended in 1981 to add the following additional grounds of discrimination: handicap, age, family, and conviction for which a pardon has been granted.

Article 7

474. The *Mental Health Act*, S.N.W.T. 1985(2), c. 6, which replaces the old *Mental Health Act*, prohibits the administration of psycho-surgery or electro-convulsive shock without consent, and also prohibits experimental treatment of an involuntary patient.

Article 8

475. The *Forest Protection Act*, R.S.N.W.T. 1974, c. F-8, as amended in 1982, allows female as well as male persons to be called up for fire-fighting service.

Article 9

476. Pursuant to the provisions of the *Mental Health Act*, a mentally disordered person may be detained involuntarily for psychiatric assessment, and if a medical practitioner, after examining that person is of the opinion that he/she is likely to cause harm to himself/herself or to others, or suffer serious bodily impairment if he/she is not detained, the person can be admitted as an involuntary patient. Whether a person is a voluntary or an involuntary patient, he/she must be informed of his/her rights. Involuntary patients have the right to counsel, to apply to the Supreme Court for a review, and to appeal the decision of the Supreme Court. They also have the right to an independent medical opinion regarding their mental disorder or the treatment they are receiving for it.

Article 10

477. The *Magistrate's Court Ordinance* has been continued under the name, the *Territorial Court Act*, S.N.W.T. 1978(2), c. 16. This Act no longer provides for the detention of children. Instead, the Act provides that "The rules of court for the Youth Court shall be the same as those for the Youth Court established under the *Young Offenders Act* (Canada), with such modification as the circumstances require". The *Young Offenders Act*, S.N.W.T. 1984(1), c. 4, was brought into force on April 2, 1984. Section 28(3) of the Act requires that a young person in custody be held separate and apart from an adult who is charged with or convicted of an offence.

Article 14

478. Section 3(5) of the *Justices of the Peace Act*, R.S.N.W.T. 1974, c. J-3, which provided for a three-year term, subject to renewal by the Commissioner, was found to be unconstitutional because it interfered with the independence of these judicial officers (*Walton v. Hebb, the Attorney General of Canada and the Commissioner of the Northwest Territories* [1984] N.W.T.R. 353). The result is that the tenure of all justices of the peace is now unlimited.

479. The *Legal Services Act*, S.N.W.T. 1979(1), c. 18, was proclaimed in force on November 1, 1979, and is the legal aid legislation for the Northwest Territories.

480. To clarify the statement in the first report, that the accused can be compelled to testify against himself, this section, although it has not been amended, would now be overridden by the *Canadian Charter of Rights and Freedoms*.

481. The *Young Offenders Act* of the Northwest Territories makes it an offence to publish the name of a young offender, or any information serving to identify the young offender. This Act also allows a Youth Court to exclude the public from a hearing where the judge considers it in the best interests of the accused young person, a young person who is a witness, or a young person who is a victim, or where he/she considers it necessary for the administration of justice, for the maintenance of order, or in the interest of public morals.

482. In clarification of this section of the first report, the position of Territorial Secretary no longer exists. In addition, sections 14(1)(*b*) and 14(1)(*i*) of the *Child Welfare Act*, R.S.N.W.T. 1974, c. C-3, have been amended to read as follows:

(*b*) the individual in whose charge he is has delivered him to the Superintendent for adoption;

(*i*) he is, or, in the absence of evidence to the contrary, appears to be under the age of twelve years and behaves in a way which, in the case of any other person, would be an offence created by an Act of Parliament or by any regulation, rule, order, by-law or ordinance made thereunder or an enactment or municipal by-law;

Also, section 14(1)(*h*) of the Act has been repealed. That section allowed proceedings aimed at the protection of any child under the age of 16 to be instituted when, with the consent or connivance of the person in whose charge he/she was, the child committed any act that rendered him/her liable to a penalty under any Ordinance, Act of the Parliament of Canada or municipal by-law.

Article 17

483. The *Landlord and Tenant Ordinance* has been replaced by the *Residential Tenancies Act*, S.N.W.T. 1987(1), c. 28.

Article 22

484. The provisions of the *Public Service Act*, R.S.N.W.T. 1974, c. P-13, which provide that the territorial government need recognize only one public service union (other than for teachers) were challenged under the Charter of Rights. That challenge was successful in the Supreme Court of the Northwest Territories. The case has been argued in the Court of Appeal, but no decision has been rendered as yet.

Article 23

485. Sections 16, 17, and 22 of the *Domestic Relations Act*, R.S.N.W.T. 1974, c. D-9, were amended when all Northwest Territories legislation was examined for compliance with the *Canadian Charter of Rights and Freedoms*. The dichotomy between the rights of the wife as compared to the rights of the husband no longer exists since these provisions now refer to "a spouse".

486. The *Legitimation Ordinance* no longer exists since the distinction between legitimate and illegitimate children has been removed in law in the Northwest Territories. This was done by way of the *Statute Law (Canadian Charter of Rights and Freedoms) Amendment Act*, S.N.W.T. 1987(1), c. 31, when all necessary amendments were made to Northwest Territories legislation in order to comply with the *Canadian Charter of Rights and Freedoms*.

487. The provisions of the *Public Service Act* relating to political activity on the part of public servants have been broadened to permit a greater range of activities. In addition, it is now the Minister who makes appointments to the public service, and not the Commissioner.

2. YUKON

Introduction

488. Since Canada's initial report of 1979, many new statutes, policies and programs have been introduced by the Government of Yukon. The Government and the Yukon Human Rights Commission have had preliminary discussions regarding the development of an ongoing mechanism for ensuring that Yukon statutes, regulations and policies are in compliance with international instruments and human rights legislation. This report reviews the substantial changes in compliance with the following articles: 1, 2, 3, 6, 7, 10, 14, and 17 to 27.

Article 1

489. In 1870, the Yukon region became part of Canada and, in 1898, the Yukon became a separate Territory.

490. Except for the areas covered by Treaty #11 of 1921, which includes the southeast portion of the Yukon, and the Inuvialuit Final Agreement of 1984, which includes the northern coast of the Yukon, no land-ceding treaty or comprehensive land claim settlement dealing with aboriginal title applies in the Yukon.

491. Currently, the Council for Yukon Indians, the federal government and the Yukon government are negotiating a comprehensive land claim settlement.

Article 2

492. The Yukon *Human Rights Act* was assented to February 12, 1987, and proclaimed as law July 1, 1987, replacing the *Fair Practices Act*. It prohibits discrimination on the grounds of ancestry, national origin, ethnic or linguistic background, religion or creed, age, sex, sexual orientation, physical or mental disability, criminal charges or record, marital or family status, and political belief, political association or political activity.

493. The *Human Rights Act* applies to the areas of employment, accommodation, public services, and membership in trade unions or occupational/professional associations.

494. The Act established a Human Rights Commission, independent from the Yukon Government and accountable to the Yukon legislature. Included in the Commission's duties is the mandate to promote research and education designed to eliminate discrimination.

495. A person who believes that he/she has been discriminated against under the prohibited grounds contained in this Act may file a complaint with the Human Rights Commission. After investigation by the Commission, complaints may be dismissed, resolved through mediation or heard by a board of adjudication. The adjudicators have the power to rule on a case and order the respondent to stop the discrimination, pay damages, and/or rectify any condition that caused the discrimination. These orders may be filed with and enforced by the Yukon Supreme Court.

496. The *Human Rights Act* outlines an appeal procedure for appealing any decision made by a board of adjudication to the Yukon Supreme Court.

497. The *Human Rights Act* supersedes all other Yukon statutes.

498. Within its first year of operation, the Human Rights Commission responded to 121 community inquiries and accepted 8 formal complaints for investigation.

Article 3

499. As outlined in article 2, the Yukon *Human Rights Act* prohibits discrimination on the basis of sex, including pregnancy and pregnancy related conditions and marital or family status. The Act also provides for equal pay for work of equal value (pay equity) in the public sector and requires the Human Rights Commission to conduct research and education on the principle of pay equity in the private sector.

500. Sexual harassment is prohibited by the Yukon *Human Rights Act.* Affirmative action programs and special programs designed to reduce disadvantages resulting from discrimination are not seen as discriminatory. The definition of discrimination outlined in the Act includes systemic discrimination.

501. The Women's Directorate was established by the Yukon Cabinet in 1985 as a free-standing, central agency within Government, reporting directly to the Minister Responsible for the Status of Women. The Directorate's objective is to integrate issues of concern to women into the mainstream of government policy-making and program development.

502. The *Change of Name Act* was amended in 1985 to change the sections that did not comply with the equality rights set out under section 15 of the *Canadian Charter of Rights and Freedoms.* A new *Change of Name Act* was enacted in December 1987 and treats women and men equally as to the provisions laid out for obtaining a change of name.

503. The *Interpretation Act* was amended in 1985 to give female and male persons equality of status and obligations under enactments, unless the enactment expressly excludes the operation of this section (section 7).

504. A new *Vital Statistics Act,* 1986, provides for the registration of a newborn child in the surname of the mother, the person shown on the registration as the father, or a hyphenated combination of the two surnames.

505. Language in most Yukon statutes passed since 1985 has been made gender neutral.

Article 6

506. As mentioned in Canada's initial report, the Yukon Government provides a number of programs and services aimed at lending positive assistance to the promotion and maintenance of life for all Yukoners. Since 1979, new programs such as the *Homecare Program,* the *Victim/Witness Program,* a *Pharmacare Program* for seniors, and the *Chronic Disease Program* covering drug costs have been established. As well, the Yukon Government offers a variety of programs and services aimed at the prevention and treatment of alcohol and drug abuse. Various territorial government departments are involved in the creation and delivery of programs aimed at prevention, treatment, law enforcement and education on family violence.

507. Through financial help from the Yukon Government, three safehomes for victims of family violence have been established in Yukon communities. The Whitehorse Transition Home also receives support from the territorial government.

508. In addition, various acts dealing with safety regulations have been enacted. These include the *Dangerous Goods Transportation Act*, 1985, the *Agricultural Products Act*, 1985, the *Gas Burning Devices Act*, 1987, and the *Occupational Health and Safety Act*, 1984. The latter sets out standards for health and safety in the workplace.

Article 7

509. The *Torture Prohibition Act*, January 1988, states that any person who inflicts torture on another person commits a tort and is liable to pay damages to the victim of the torture.

510. The *Human Tissue Gift Act* outlines requirements for consent to *inter vivos* transplants.

Article 10

511. Under section 137(4)*c*) of the *Children's Act*, 1984, the Director of Family and Children's Services has a duty to provide for the child's physical and emotional needs between the time the child is taken into care and a custody order is made.

512. Accused juvenile persons are treated separately in accordance with the federal *Young Offenders Act*, 1984 and the *Young Persons Offences Act*, 1987. A "secure" custody facility is presently under construction in the Yukon. Currently no such facility exists, and young offenders requiring closed custody are sent out of the territory.

Article 14

513. The Yukon *Languages Act*, 1988, provides for the use of French or English in court proceedings starting December 31, 1992.

514. The federal *Young Offenders Act* and the Yukon *Young Persons Offences Act*, 1987, both include specific procedures in recognition of juveniles' age and the desirability of promoting their rehabilitation.

Article 17

515. The Yukon *Human Rights Act* states that every individual has the right to the peaceful enjoyment and free disposition of his or her property subject to the conditions set out by law. The Act also protects the honour and reputation of respondents in that complaints of a "frivolous or vexatious" nature will be dismissed by the Commission.

516. The *Children's Act* provides for privacy of court proceedings and of access to personal information from the Director of Family and Children's Services (sections 173, 176).

517. Under the *Young Offenders Act* and the *Young Persons Offences Act*, publication of young persons' names, be they the accused or a witness, is prohibited.

Articles 18, 19, 20, 21, 22

518. The Yukon *Human Rights Act* states that every individual has the right to freedom of expression, freedom of religion and of conscience, freedom of assembly and of association, and the right to enjoyment and disposition of property, all in accordance with the law.

519. Persons detained in a Yukon correctional institution have access to religious ceremonies and members of the clergy. There are provisions for Native spiritual practices such as sweet grass ceremonies in the Whitehorse Correctional Centre.

520. Section 132 of the *Children's Act* outlines how a court order may be authorized which gives the Director of Family and Children's Services power to consent to emergency medical treatment of a child. To date, challenges to such provisions in other jurisdictions on the basis of section 2(*a*) of the *Canadian Charter of Rights and Freedoms* (freedom of religion) have been unsuccessful. (See federal section, article 18.)

521. The *Access to Information Act*, 1983, provides a mechanism whereby any person may obtain information in records of Yukon government departments subject to limitations necessary for the effective operation of departments in the public interest. A denial of information under this Act may be appealed to the Yukon Supreme Court.

Article 23

522. The Yukon *Human Rights Act* prohibits discrimination on the basis of family or marital status.

523. The *Children's Act* expresses that the policy of the legislation is "to supply services as far as reasonably practicable to promote family units and to diminish the need to take children into care or to keep them in care" (section 105). The Director is required to take reasonable steps "to promote family conditions that lead to good parenting".

524. In 1985, the *Marriage Act* was amended to repeal the sections which stated that no person could perform a marriage ceremony when they were aware that either contracting party was mentally disordered or suffering from a communicable disease.

525. The *Family Property and Support Act*, 1979, expresses "that child care, household management and financial provision are the joint responsibilities of the spouses and that inherent in the marital relationship there is joint contribution, whether financial or otherwise, by the spouses to the assumption of these responsibilities" (section 5). The Act sets out provisions for division of family assets upon marriage breakdown, support payments and domestic contracts.

Article 24

526. The Yukon *Human Rights Act* prohibits discrimination on the basis of age and family status.

527. The *Children's Act* states that, in its application, the best interests of the child affected by the proceeding shall be the paramount consideration. The protection for children under the new Act has expanded to include sexual abuse.

528. Requirements to report cases of child abuse or neglect in the *Child Welfare Act* (repealed 1984) were replaced with a non-compulsory provision in section 115 of the *Children's Act*.

529. Section 109 of the *Children's Act* states that in child-protection cases, where practicable, a child will be placed with a family of the child's own cultural background and lifestyle, preferably in his or her home community.

530. In adoption cases, policy exists in the Yukon that gives primary consideration to the placement of an Indian child with approved Indian adopters.

531. Various sections of the *Children's Act* set out alternatives to taking a child into custody (sections 32, 118, 140).

532. The *Maintenance and Custody Orders Enforcement Act*, 1986, establishes a clear legal basis for the Yukon Government to automatically enforce maintenance and custody orders on behalf of the beneficiaries of those orders.

533. The Yukon *Day Care Act* was enacted in 1979. It provides for licensing and regulation of day-care centres and family day-homes. In 1986, new regulations were introduced which improved the quality of day care available in the territory. Subsidies are available for families that meet the requirements set out in the *Day Care Subsidy Program*. In 1986, the Yukon Government initiated a program of direct grants to licensed Yukon day-care centres.

Article 25

534. The *Languages Act*, 1988, confirms the right to use French, English or an Aboriginal language in debates of the Legislative Assembly. The Act also provides for the provision of services in French in the Yukon Territory. These provisions come into effect by December 31, 1992.

535. A 12-month residency requirement for voting in territorial elections (*Elections Act*, s. 18(1)*c*)) was challenged in court as an infringement of the right to vote under section 3 of the *Canadian Charter of Rights and Freedoms* (*Hedstrom v. Commissioner of the Yukon Territory and the Council for Yukon Indians, Intervenor, 1985*). A Yukon Supreme Court decision which rendered the residency requirement unconstitutional was overturned in a higher Court of Appeal decision in 1986.

536. The Yukon *Corrections Act* was amended in 1983 to allow accused persons on remand to vote in territorial and federal elections.

537. All persons detained in Yukon correctional institutions may vote in municipal and local/band elections where they meet the voting requirements under the *Municipal Act* and *Indian Act* respectively.

538. Convicted detained persons may vote in federal and territorial elections only if they have freedom of movement through programs such as the Work Release Program (*Elections Act*, s. 5). Access to polling stations for convicted persons would be a "reasonable" restriction under this article.

Article 26

539. The Yukon *Human Rights Act* prohibits discrimination on the basis of age. The *Territorial Court Act*, section 41(1)*a*), was amended in 1988 to eliminate the mandatory retirement age.

540. The Yukon *Human Rights Act* sets out duty to make reasonable provisions in connection with employment, accommodations and services for the special needs of physically disabled people.

541. In 1986, the Yukon Government created the Positive Employment Program. This affirmative action program is designed to increase representation of Native people, women and disabled persons throughout all job categories within the Yukon Government.

542. See also articles 2 and 3.

Article 27

543. The Yukon *Human Rights Act* recognizes the multicultural heritage of the residents of the Yukon. Provisions under the Act do not affect rights pertaining to aboriginal peoples established by the Constitution of Canada or by a land claims agreement.

544. The *Languages Act*, 1988, provides for certain services to be available in French or English, as of December 31, 1992 and, subject to the establishment or regulations by the Commissioner in Executive Council, in one or more of the aboriginal languages.

545. Native language programming has been established in over half of the schools in the Yukon. French language instruction is available in most Yukon schools.

II. THIRD REPORT

Submitted in August 1990

II. THIRD REPORT OF CANADA

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INTRODUCTION

1. The present is the third report submitted by Canada under the International Covenant on Civil and Political Rights. It is being submitted, at the request of the United Nations Secretariat, as an update of the second report submitted in July 1989.

2. Canada is a federal state which is composed of ten provinces and two territories. In conformity with article 50 of the Covenant, which stipulates that its provisions shall extend to all parts of federal States, all governments in Canada are involved in the implementation of this treaty. Consequently, Canada's reports contain information on measures adopted by the federal government and each of the provincial and territorial governments. The present report contains a section prepared by each government.

PART I: GOVERNMENT OF CANADA

Article 2

Paragraph 3

3. On September 22, 1988, an agreement was announced to provide redress to Canadians of Japanese ancestry for injustices they suffered during and after the Second World War. The agreement includes: an official acknowledgement of the injustices; symbolic payments of $21,000 to those affected who are still living; a $12 million fund for the Japanese Canadian community; and a $24 million endowment for a Canadian Race Relations Foundation (see paragraph 56). By the end of March 31, 1990, the government had received approximately 18,000 applications for individual redress and had completed 15,000 of them.

Article 4

4. The new comprehensive federal emergencies bill, noted at para. 16 of Canada's Second Report, became law on July 21, 1988 as the *Emergencies Act*. The aspects of this legislation discussed earlier still apply. As well, s. 4(*b*) provides that the Act confers no authority to make orders or regulations providing for the detention, imprisonment or internment of Canadian citizens or permanent residents under the *Immigration Act* "on the basis of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability".

Article 5

5. The case of *John Ross Taylor et al. v. Canadian Human Rights Commission* (discussed at paras. 17-18 of the Second Report) was argued before the Supreme Court of Canada in December 1989. The Attorney General of Canada argued in support of s. 13 of the *Canadian Human Rights Act*, which prohibits the communication of hate messages by telephone. The Court's decision is pending. Two other cases, involving the hate propaganda provisions of the *Criminal Code* are discussed at art. 20.

Article 7

(i) U.N. Convention against Torture

6. On January 26, 1990, subsequent to Canada's ratification of the U.N. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Canada made declarations pursuant to articles 21 and 22 of the Convention, recognizing the competence of the Committee against Torture to consider communications from a state party or an individual that Canada is in violation of any of the provisions of the Convention.

(ii) Assistance to refugees who have been victims of torture

7. In February 1989, the government released the report of the Canadian Task Force on Mental Health Issues Affecting Immigrants and Refugees. This Report revealed that little was known about the psychological devastation caused by torture and the means to help refugees in Canada who have suffered this horrendous treatment. Consequently, a follow-up study has been commissioned to examine how torture affects the mental health of refugees and how effective treatment strategies can be developed.

8. Some financial assistance is also given by the federal government to the Canadian Centre for Victims of Torture in Toronto. This Centre and the Vancouver Centre for Survivors of Torture provide both physical and psychiatric medical assistance, individual, family and group counselling, a referral service for legal and social assistance, and comprehensive language classes that take into account the victim's past traumatic experiences and their difficulties in adapting to Canadian life. As well, the Toronto Centre conducts information seminars with various sectors of the community, such as the police, boards of education, hospitals and health centres, and social agencies. A medical protocol for doctors to examine torture victims and document their experience is also provided by the Centre.

(iii) Medical research project

9. At the 1988 Ministerial Conference on Human Rights, it was agreed that reports be prepared on the human rights implications of several medical/legal issues, including medical research on human beings, for presentation at the next Ministerial Conference. The report currently being prepared deals with such issues as basic principles of consent and qualifications to the consent requirement, safety and health, equity and non-discrimination, privacy and confidentiality, and freedom of research. The issue of how medical research is to be defined is also addressed, as well as the appropriate mode for implementing standards in this area.

10. As well, a Royal Commission was created in the fall of 1989 to study new reproductive technologies. The Commission will conduct research and hold public hearings.

Article 8

11. In the context of protecting against child slavery, the *Criminal Code* was amended in 1988 to: (1) create new offenses dealing with child sexual abuse; and (2) impose higher maximum penalties for the offenses of living off the avails of juvenile prostitutes, soliciting juveniles, and using the sexual services of a juvenile prostitute (Bill C-15).

Article 9

Paragraph 1

12. The Supreme Court of Canada has held that legislation authorizing police to stop motorists solely for the purpose of verifying their driving status or licenses, is a violation of the guarantee against arbitrary detention in s. 9 of the Charter. However, such detention is a justifiable limit in a free and democratic society pursuant to s. 1 of the Charter, in light of the public's interest in highway safety and the relatively minor nature of the intrusion (*Hufsky v. R.; Ladouceur v. R.*).

13. The stopping of a motorist for an articulable cause, determined according to the particular circumstances of the case, is not considered to be arbitrary by the courts and is, therefore, not a violation of the guarantee against arbitrary detention (*Wilson v. R.*).

Paragraph 3

14. For the purposes of the right to be tried within a reasonable time under s. 11(*b*) of the Charter, it is the period between the laying of the charge and the conclusion of the trial that is relevant. Delay prior to the laying of a charge is protected by other sections of the Charter, such as s. 9 (right not to be arbitrarily detained) and s. 7 (right not to be deprived of liberty or security of the person except in accordance with the principles of fundamental justice) (*R. v. Kalanj*).

Paragraph 5

15. Other than the protection provided by the Charter, a victim of a violation of this right may also rely on laws governing civil liability to obtain compensation for damages suffered.

Article 12

16. In the context of the right in s. 6 of the Canadian Charter to reside and pursue the gaining of a livelihood in any province, the Supreme Court of Canada has stated that s. 6 permits a person to pursue a living throughout Canada, even if that person is not physically located in a particular province. Moreover, s. 6 is violated if a person is seriously disadvantaged in, although not totally precluded from, making a livelihood. Thus, a provincial law society rule which seriously impaired the ability of out-of-province lawyers to maintain a viable association with resident lawyers, was declared unconstitutional. (*Law Society of Alberta v. Black et al.*)

Article 14

Competent, independent and impartial tribunal

17. In Canada, candidates for judicial office were formerly screened by a committee of the Canadian Bar Association prior to appointment. However, in October 1988, independent committees were constituted for this purpose in each province and territory. The committees include a person chosen by the federal Minister of Justice to represent the community's interests. The committees also include representatives of the relevant provincial or territorial government, the judiciary, and the practising bar.

18. The criteria for appointment of federal judges are: (1) membership in good standing in a provincial or territorial law society and ten years at the bar, or a combined ten years at the bar and as a provincial court judge (*Judges Act*, s. 3); and (2) considerations of professional ability, integrity and general reputation in the community.

19. The Canadian Judicial Centre, which began operations in 1988, was established to respond to the educational requirements of both federally and provincially appointed judges. Among other things, it designs and co-ordinates judicial educational services to meet the requirements of the Canadian judiciary in skills training, continuing professional education and professional enrichment. The Centre is managed by the judiciary and jointly funded by the federal, provincial and territorial governments.

Paragraph 2

20. The Supreme Court of Canada has held that the guarantee of the presumption of innocence in s. 11(*d*) requires the prosecution to prove each of the essential elements of a criminal offence beyond a reasonable doubt. Thus, a provision requiring an accused to disprove an essential element of a criminal offence on a balance of probabilities, violates s. 11(*d*) of the Charter (*R. v. Whyte; R. v. Oakes*).

Article 17

21. The Supreme Court of Canada has held that a demand for information and production of documents, pursuant to the *Income Tax Act*, for the purpose of validating income tax returns, did not contravene the protection against unreasonable search and seizure in s. 8 of the Charter. The Court stated that where a seizure takes place in the administrative or regulatory context, rather than in the criminal law context, less stringent requirements apply (*McKinlay Transport Ltd. v. The Queen*).

22. In *Duarte v. R.*, the Supreme Court of Canada held that surreptitious electronic surveillance of an individual by the state constitutes an unreasonable search and seizure, even where one of the persons being taped has consented. Such an intrusion on privacy is reasonable only where authorized by an independent judicial officer on the basis that: (1) an offence has been or is being committed; and (2) other investigative procedures have failed or are likely to fail or the urgency of the matter warrants the use of electronic surveillance.

Article 18

23. The *Mission of the Correctional Service of Canada* (a policy statement approved in February 1989) states that the Correctional Service "will accommodate, within the boundaries of the law, the cultural and religious needs of individuals and minority groups, provided the rights of others are not impinged upon", and further that it will "respect the social, cultural and religious differences of individual offenders".

Article 19

24. The Supreme Court of Canada has held that freedom of expression includes the right to express oneself in the language of one's choice (*Ford et al. v. A.G. Que.*), that it extends to commercial expression (*A.G. Que. v. Irwin Toy Ltd et al.*), and even to a prostitute's public communications with a prospective client (*Reference re Sections 193 and 195.1(1)(c)*

of the Criminal Code). However, in the latter case it held that *Criminal Code* restrictions on such communications are a reasonable limit under s. 1 of the Charter.

25. As well, freedom of expression extends to access to information because such access is important in enabling individuals to make informed choices (*Ford et al. v. A.G. Que.*), and in ensuring the openness, integrity and independence of the courts (*Edmonton Journal v. A.G. Alta. et al.*).

Article 20

26. Decisions in *R. v. Keegstra* and *R. v. Andrews and Smith* are currently pending before the Supreme Court of Canada. These cases concern the validity of a limit on free expression arising from a *Criminal Code* prohibition on the dissemination of hate propaganda. Reference should also be made to *Taylor v. Canadian Human Rights Commission*, discussed under art. 5 of this Report.

Article 22

27. In *Lavigne v. Ontario Public Service Employee Union et al.* (appeal to the Supreme Court of Canada heard June, 1990), the Ontario Court of Appeal held that the inclusion of a mandatory dues check-off clause in a collective agreement did not infringe freedom of association, as guaranteed by s. 2(*d*) of the Charter, of employees who were not union members (see para. 103 of Second Report).

Article 23

28. In 1990, after extensive consultations with the various religious communities in Canada, the *Divorce Act, 1985* was amended to preclude a party to a divorce action from obtaining a civil divorce where he or she has refused to cooperate in the removal of a religious barrier to the remarriage of the other spouse. This legislation was introduced to overcome a problem experienced in the Jewish community regarding the refusal by one spouse to grant the Jewish *get* or divorce to the other spouse, with the consequence that the latter was not free to remarry within the tenets of his or her religious faith, even though a civil divorce had been granted.

29. The Guiding Principles of the *Mission* of the Correctional Service of Canada recognize "the value of family and community relationships" and "that the establishment and maintenance of positive community and family relationships will normally assist offenders in their reintegration as law-abiding citizens".

Article 24

30. Canada signed the *Convention on the Rights of the Child* on May 28, 1990, and legislation and policies are currently being reviewed for consistency with the Convention, with a view to ratifying it as soon as possible.

31. Canada is one of the six States sponsoring the World Summit for Children, to be held in New York on September 29-30, 1990. Domestic preparations for the Summit include the development of a National Paper on the situation of children in Canada.

32. Section 209.2 of the *Canada Labour Code* was amended in 1987 to make it compulsory for employers to continue contributing to pension, health and disability plans for employees on child care leave.

Article 25

33. In *Osborne v. The Queen*, the Federal Court of Appeal struck down legislation prohibiting public servants from working for or against political parties and candidates (leave to appeal granted to the Supreme Court of Canada) (see para. 120 of the Second Report). In *Fraser v. Public Service Staff Relations Board*, the Supreme Court of Canada held that limits may be put on the right of public servants to speak on public issues in the interest of maintaining an impartial public service.

Article 26

(i) Charter cases

34. In *Andrews v. Law Society of British Columbia*, the Supreme Court of Canada held that the list of prohibited grounds of discrimination in respect of the s. 15 equality right in the Charter is not exhaustive, and that other distinctions based on analogous grounds are also subject to s. 15 review. In particular, it stated that a group may be entitled to the protection of s. 15 if it bears such indicia of discrimination as stereotyping, historical disadvantage or vulnerability to social and political pressure. In *Turpin et al. v. The Queen*, the Supreme Court emphasized that s. 15 must be interpreted and applied in terms of its central purpose of remedying and preventing discrimination against groups suffering social, political and legal discrimination in society.

35. In *R. v. Sheldon S.*, the Supreme Court of Canada held that it was not contrary to s. 15 for the *Young Offenders Act* to give provincial governments the option of whether or not to create alternative measures programs for young offenders, in light of the division of powers in Canada, and also the fact that the differentiation in question was not based on the personal characteristics of young offenders.

(ii) *Canadian Human Rights Act*

36. In *A.G. Canada v. Druken et al.*, the Federal Court of Appeal held that provisions of the *Unemployment Insurance Act* which precluded persons from obtaining unemployment insurance benefits where they had worked for their spouse, or a corporation more than 40% controlled by their spouse, discriminated on the basis of marital or family status (leave to appeal to Supreme Court of Canada denied). It also held that the *Canadian Human Rights Act* had primacy over other federal legislation.

37. In *Gauthier et al. v. Canadian Armed Forces*, a Human Rights Tribunal concluded that restrictions on the employment of women in the Canadian Armed Forces were discriminatory. The Tribunal ordered the full integration of women into the Canadian Armed Forces within 10 years, except for service on submarines. This decision has not been appealed.

38. Pursuant to the initiative described in para. 129 of the Second Report on the implementation of equal pay for work of equal value, in January 1990 the federal government announced retroactive payments of $317 million and ongoing adjustments of

$76 million for 62,000 federal public servants in female-dominated employment groups. The Canadian Human Rights Commission is reviewing the offer to see if it meets the equal pay provisions of the *Canadian Human Rights Act.*

39. In 1987, the Canadian Human Rights Commission issued a policy on drug testing which accepts the potential need to test "for cause" and post accident in safety-sensitive positions. The Commission does not endorse random mandatory drug testing. In 1988, it issued a policy stating that persons suffering from AIDS/HIV infection are protected by the prohibition against discrimination on the basis of disability in the *Canadian Human Rights Act.*

40. An overall review is currently being conducted of the *Canadian Human Rights Act,* taking into consideration recent court cases, recommendations made by the Canadian Human Rights Commission and Parliamentary Committees, and amendments to provincial anti-discrimination laws. The review is examining the scope of the Act, including grounds of discrimination, procedures, and the structure of the mechanisms for enforcement of the Act.

(iii) Other developments

41. Since the *Employment Equity Act,* discussed in para. 136 of the Second Report, came into force in 1986, there have been two annual reports to Parliament consolidating and analyzing the employment equity data reported annually by employers who are covered by the Act. The 1989 Report shows a marginal increase over the 1988 representation of designated groups in the workforce.

42. So far, over 1,200 contractors have filed Certificates of Commitment pursuant to the Federal Contractors Program, discussed in para. 137 of the Second Report. Over 700 have received contracts, and of those, over 200 have been reviewed or are being reviewed for compliance. To date, two contractors were found not in compliance and sanctions were imposed until acceptable employment equity plans were submitted and appropriate measures taken.

43. Amendments were made in June 1989 to the *Pension Act* (disabled veterans) and to all the major public service pension statutes to remove the provisions that suspended surviving spouses' pensions upon remarriage, and student allowances upon marriage. The amendments also ended, where applicable, the reduction of benefits to surviving spouses who are 20 or more years younger than the deceased plan contributor.

44. The *Unemployment Insurance Act* was amended in April 1988 to allow the father of a newborn child to receive paternity benefits, if he proves that it is reasonable to remain at home in order to care for the child by reason of the death or disability of the mother.

45. An assessment is under way of the impact of the 1985 amendments to the *Indian Act,* which removed sexually discriminatory provisions and permitted the reinstatement or registration of certain individuals as status Indians (see para. 132 of the Second Report). Due to the significant numbers of people reinstated or registered, additional funding has been provided to Indian bands.

46. The Report of the Royal Commission on the Donald Marshall, Jr. Prosecution, discussed at para. 100 of this report, highlighted the need to improve the criminal justice system in respect of indigenous people and visible minorities. The federal and provincial

governments have addressed each of the Royal Commission's 82 recommendations. Some of the federal measures which are being taken include: (1) the establishment of a regular forum between the federal government, the Province, and Native associations to consult on Aboriginal criminal justice issues and other issues of common concern; (2) the establishment of a national recruiting team for the Royal Canadian Mounted Police to increase the representation of indigenous people and visible minorities in the force; and (3) the development of educational programs for judges, police and lawyers to encourage sensitivity to minority concerns.

47. In March 1990, the Minister of Transport announced a *Strategy on Substance Abuse in Safety-Sensitive Positions in Canadian Transportation*; implementing legislation will soon be introduced. Also in March 1990, the Canadian Armed Forces announced a comprehensive strategy on alcohol and drug abuse control in the Canadian Armed Forces, which will include mandatory random testing for all members of the Canadian Armed Forces.

48. The federal government has introduced new measures to provide attendant services for federal employees with severe disabilities and to improve access to government buildings for persons with disabilities.

49. The government report of the Task Force on Barriers to Women, released in April 1990, identifies and recommends solutions to barriers to the employment of women. Its key findings will be brought to the attention of managers and employees in order to increase awareness of the more subtle obstacles created by attitudes and corporate culture.

50. The federal government administers a Women's Program which finances the activities of women's groups seeking to improve the economic, legal and social situation of women and to facilitate their participation in the life of the country. During the fiscal year 1989/90, the Program distributed $11.2 million to more than 500 groups.

51. On May 10, 1990, the Government of Canada announced the renewal of the Court Challenges Program with funding of $13.75 million over a five-year period (see para. 126 of the Second Report). The program provides financial assistance in test cases pertaining to equality and language rights of particular constitutional significance.

52. The *Canadian Multiculturalism Act*, described in para. 149 of the Second Report, was adopted in 1988. The Act sets out the Multiculturalism Policy of Canada, which is designed to preserve and enhance the multicultural heritage of Canadians and to achieve the equality of all Canadians in the economic, social, cultural and political life of Canada. The Act commits federal institutions to implement the Multiculturalism Policy throughout the Government of Canada.

53. The government announced four new Multiculturalism programming directions and additional resources to implement the Multiculturalism Policy. These directions include measures to promote its implementation across all federal institutions, and three new programs of financial and technical assistance, entitled Race Relations and Cross-Cultural Understanding, Heritage Cultures and Languages, and Community Support and Participation.

54. The Multiculturalism Secretariat was established to support the Minister in his coordination role and to assist in implementing multiculturalism commitments across the government.

55. In 1989, for the first time, a national public education campaign focussed around March 21, International Day for the Elimination of Racial Discrimination. In 1990, the campaign was repeated and broaden to involve scores of partners across the country -- including individuals and institutions -- in the fight against racism.

56. Bill C-63 was tabled in February 1990 to establish the Canadian Race Relations Foundation. The Foundation will serve as a national resource for community groups, researchers and the general public to further understanding of racism and racial discrimination in Canadian society, and to develop effective policies and programs in the area of race relations.

57. Bill C-18, *An Act to establish the Department of Multiculturalism and Citizenship*, was tabled in May, 1989. This new Department will deliver services in the program areas of multiculturalism, citizenship registration and promotion, literacy, voluntary action and human rights. At time of writing, Bill C-18 had received third reading in the House of Commons, and was moving through the Senate.

Article 27

(i) Constitutional cases

58. In *Sparrow v. The Queen*, the Supreme Court of Canada confirmed that s. 35 of the *Constitution Act, 1982*, which recognizes and affirms the Aboriginal and treaty rights of Indian, Inuit and Métis people, provides substantive protection to existing Aboriginal and treaty rights by ensuring that governments do not unduly interfere with the exercise of those rights. In the case of fisheries, the Court stated that, after conservation and management concerns have been addressed, priority must be given to indigenous food fishing and fishing for ceremonial purposes. Only then will the non-Native fishery be accorded its share.

59. In *Société des Acadiens v. Association of Parents* and *R. v. Mercure*, the Supreme Court of Canada, while affirming that language rights are fundamental human rights, held that the legislative process, rather than judicial interpretation, is the appropriate means for advancing language rights beyond the basic guarantees set forth in ss. 16-20 of the Charter.

60. In *Mahé et al. v. Attorney General of Alberta*, the Supreme Court of Canada decided that s. 23 of the Charter includes the right of minority language groups to manage and control their own school facilities.

(ii) Other developments

61. The Legal Studies for Aboriginal Peoples Program offers financial assistance to Métis and Non-Status Indian Students to attend a pre-law summer orientation program and then law school for three years. The budget level for this Program is $296,970, and since its inception in 1973, 80 recipients of financial assistance have obtained law degrees.

62. In 1989, the Canadian Aboriginal Economic Development Strategy was established, which provides long-term employment and business opportunities to Aboriginal men and women, by giving them the means to manage effectively their own business enterprises, economic institutions, job training and skill development.

63. As of March 1990, self-government proposals were being negotiated with a total of 161 Indian communities across Canada. Tripartite self-government negotiations, which involve the federal government, Métis and off-reserve Aboriginal peoples, and the provinces concerned, are also under way in Ontario, Manitoba and Prince Edward Island.

64. Since 1987, significant steps have been made towards settling comprehensive land claims in the North: final agreements regarding the Dene-Métis comprehensive land claim and the Yukon Indian land claim were initialled; and an agreement in principle regarding the Tungavik Federation of Nunavut land claim was signed. This latter agreement involves 349,623 square kilometres of land without surface rights, 36,257 square kilometres of land with surface rights, and $580 million in financial compensation, as well as guaranteeing wildlife harvesting rights, participation in decision-making structures dealing with land and environmental management, and resource royalties.

65. Fifty specific land claim settlements were negotiated in 1989-1990, dealing with grievances arising from governmental management of Indian land and resources, or for fulfilment of entitlement due under a treaty.

66. The federal government also provides financial support to Aboriginal organizations off-reserve which foster Aboriginal people's full participation in the social, political and economic structures of decision making in Canada. Further, the Government has concluded Aboriginal language agreements with each of the Northwest Territories and the Yukon which provide the necessary support for policy implementation.

67. The federal government has approved a Northern Political and Economic Framework, and so confirmed its commitment to the political evolution of the North, where Aboriginal people are the majority in many areas. The elements include: transferring responsibility for programs to the territorial governments; settling land claims in an expeditious fashion; ensuring a full debate on division of the Northwest Territories; and developing strong and stable economies.

68. The *Canadian Multiculturalism Act*, described under Article 26, was enacted in 1988. It provides a legislative basis for the three multicultural programs noted under Article 26. Two of these (Heritage Cultures and Languages, and Community Support and Participation) support, in a proactive manner, the requirements of Article 27.

69. In September, 1989, Bill C-37 was tabled to establish a Canadian Heritage Languages Institute, the purpose of which is to encourage the preservation and use of heritage languages throughout Canada. It will focus on national teacher training and program development, the production of Canadian-oriented teaching materials, public education and research into all aspects of Canada's heritage languages. At time of writing, Bill C-37 has been referred to a Legislative Committee of the House of Commons.

70. In 1988, Parliament adopted the new *Official Languages Act*, described in para. 143 of the Second Report, which reinforces the linguistic rights of all Canadians. The Act, which provides that the English and French languages have equality of status in all institutions of the Parliament and government of Canada, applies to all federal institutions in the country. It also recognizes the commitment of the Government of Canada to enhancing the vitality and supporting the development of English and French linguistic minority communities of Canada.

PART II: GOVERNMENTS OF THE PROVINCES

NEWFOUNDLAND

71. Newfoundland's submission to this report will update to May 1990, the information contained in Canada's Second Report under the Covenant.

Article 2(3)

72. Amendments have been made to the procedural provisions of *The Newfoundland Human Rights Code*, now *The Human Rights Code, 1988*, S.N. 1988, c. 66. The new procedure authorizes the Human Rights Commission to refer complaints, which could not be settled, to a Board of Inquiry chosen from a panel of persons appointed for that purpose. The Board has broad powers to inquire into the complaint and to make an appropriate order. The order may be filed with the Supreme Court and is enforceable in the same way as a judgment of that court.

Article 7

73. Relevant information is found in Newfoundland's submission to Canada's Initial Report under the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.*

Article 10(3)

Adults

74. The scope and diversity of programs available to adults incarcerated in a provincial correctional facility vary with the institution. In general, there are three main categories of programs: (1) Personal and Social Development, which includes programs such as life skills (instruction in fundamental adaptive abilities such as budgeting, interpersonal relations, job seeking, etc.), addictions therapy (Alcoholics Anonymous and other self-help groups), volunteer work release (inmates providing services to non-profit community agencies), chaplaincy (religious services, Bible studies, counselling), temporary absence (conditional release to community), physical fitness (various recreational opportunities), group counselling for sex offenders, and job exploration; (2) Academic and Vocational, which includes programs such as literacy training, tutoring (by volunteers), academic upgrading, computer technology, food services, carpentry, masonry, typing, university courses, handicrafts, and small engine repair; and (3) Forestry and Agriculture, which includes programs such as dairy farming, poultry, forestry, and agriculture.

Youths

75. Youths who have been sentenced to a period of secure custody are segregated from adult offenders. Placement in a facility depends on the characteristics and needs of the individual youth.

76. The underlying philosophy of the facilities focusses on rehabilitation of the young offender, and programs are directed to this goal. Educational programs include the mainstream junior and senior high school curriculum, special education, academic upgrading, vocational training and work experience. Where offenders will be in the facility for less than an entire school year, liaison is maintained with the youth's school in the community to facilitate transfer back to that school. Other programs include: life skills programs which focus on independent living skills, social and recreational activities and spiritual development.

77. Where young offenders of Native ancestry are held in a facility, an attempt is made to involve persons from such organizations as the Native Friendship Centre. In addition to contact within the facility, depending on security concerns, the young offender may be permitted contact in the community with persons associated with the Centre or with other appropriate persons.

78. While girls comprise less than 10% of young offenders held on remand or in secure custody, the programs available to them are the same as those available to boys.

Article 11

79. Enforcement of contractual obligations is through civil proceedings. Section 132 of *The Judicature Act, 1986* provides that a person may not be arrested and held to bail in any civil proceeding.

Article 14(3)(*d*)

80. Pursuant to *The Legal Aid Act*, S.N. 1975, c. 42, legal assistance is available to an accused who meets specified criteria and who is financially incapable of engaging counsel. Assistance is provided without charge or with a partial charge, depending on the ability of the applicant to pay a portion of the costs. In general, assistance is available to an accused charged with an indictable offence and to a person charged with a summary conviction offence if, upon conviction, imprisonment or loss of means of earning a livelihood is likely.

Article 14(3)(*f*)

81. Where an accused requires the assistance of an interpreter, one will be appointed and paid for by the court.

Article 14(4)

82. *The Young Persons' Offenses Act*, S.N. 1984, c. 2, which deals with the procedure applicable to young offenders, recognizes special considerations relevant to the immaturity of the offender and the importance of rehabilitation. The Act deals with such considerations as: the provision of youth courts, notice to parents, alternative measures, disposition alternatives, procedures relevant to the making of a custody order, and disclosure of the youth's record.

Article 23(4)

83. Pursuant to Part III of *The Family Law Act*, S.N. 1988, c. 60, which replaces *The Matrimonial Property Act*, every spouse has an obligation to provide for himself or herself

and for the other spouse, in accordance with need, to the extent that he or she is capable of so doing. In addition, every parent has an obligation to provide support, based on the same criteria, for his or her child who is a minor and unmarried.

84. *The Children's Law Act*, S.N. 1988, c. 61, provides that applications to the courts in respect of custody of and access to children will be determined on the basis of the best interests of the child. Relevant criteria are set out in section 31. Under the Act, the courts are given broad authority to make appropriate orders to ensure enforcement of custody and access orders. For example, wrongful denial of access may result in a court ordering compensatory access periods, supervision by the Director of Child Welfare or the appointment of a mediator.

85. Pursuant to *The Support Orders Enforcement Act*, S.N. 1988, c. 58, the office of the Director of Support Enforcement is created. The Director's mandate is to enforce support orders registered under the Act in a manner that appears practicable. Where appropriate, the Director may initiate garnishment or take proceedings in court.

Article 24(1)

86. *The Children of Unmarried Parents Act*, referred to in the second Report, has been repealed. *The Children's Law Act* provides that, for all purposes of the law, a person is the child of his or her natural parents, whether the child was born inside or outside marriage. Upon adoption, the child is, in law, the child of the adopting parents as if they were the natural parents.

87. Pursuant to *The Child Welfare Act, 1972*, S.N. 1972, c. 37, a Judge may declare a child to be a child in need of protection, and may make an order with respect to the future of the child where it appears that the interests of the child and the public interest would best be served by the order.

PRINCE EDWARD ISLAND

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88. The purpose of this report is to update the information provided for the Prince Edward Island section of the Second Report of Canada on the *International Covenant on Civil and Political Rights* submitted in July 1989.

Article 2

89. The *Human Rights Act*, R.S.P.E.I. 1988, c. H-12, was amended in June 1989 to clarify the definition of political belief contained in the Act which had been adjudged by the Supreme Court of Prince Edward Island to be incapable of definition in a decision rendered in March 1988. The Act now defines political belief as being that association with a political party which is registered pursuant to the *Election Act*, R.S.P.E.I. 1988, c. E-1.

90. This amendment to the *Human Rights Act* authorized the application of the new definition to complaints previously filed under the Act.

Article 3

91. The *Pay Equity Act*, R.S.P.E.I. 1988, c. P-2, was passed in 1988 to achieve pay equity by redressing systemic gender discrimination in wages paid for work performed by employees in female-dominated classes and to maintain pay equity in the public sector.

Article 23

92. The *Family and Child Services Act*, R.S.P.E.I. 1988, c. F-2, was amended in 1990 requiring the reporting of any act of abandonment, desertion, or abuse of a child no matter who was carrying out such an act. Previously, the compulsory reporting obligation in the Act was only required when the act of abandonment, desertion, or abuse was carried out by the person responsible for the care and well-being of the child.

93. The Legislature of Prince Edward Island passed the *Maintenance Enforcement Act*, R.S.P.E.I. 1988, c. M-1, in 1988. This Act provided a comprehensive system of enforcement of maintenance orders and the mechanisms whereby maintenance could be obtained in support of the family from a defaulting spouse. This Act removes the cost imposed in attempting to collect maintenance arrears from the recipient spouse and provides provincial employees with the power to collect on behalf of that individual.

Article 24

94. In 1990, the Legislature of Prince Edward Island passed the *Youth Employment Act*, S.P.E.I. 1990, c. 66 (not proclaimed yet), which provides protection for young persons, being persons under the age of 16 years, from employment that is or is likely to be harmful to the health or safety, or moral or physical development of the young person. The Act also provides that young persons may not be employed during school hours or between 11:00 p.m. and 7:00 a.m.

NOVA SCOTIA

Article 2

95. As a result of the Revised Statutes of Nova Scotia 1989, the *Human Rights Act*, S.N.S. 1969, c. 11, is now cited as *Human Rights Act*, R.S.N.S. 1989, c. 214.

96. An improved *Freedom of Information Act* was introduced by the Government in May 1990. This proposed Act will increase access to government information by the public.

97. In April 1989 the Government appointed a Victim Services Co-ordinator whose duties include the promotion of research into victims' services, needs and concerns, and making recommendations on policies respecting services for victims of crime. The *Victims' Rights and Services Act*, S.N.S. 1989, c. 14, which came into force in January 1990, provides for a Victims' Assistance Fund and its monies are obtained through a 15% surcharge on fines levied under provincial statutes.

Article 3

98. The *Pay Equity Act*, R.S.N.S. 1989, c. 337, which came into force in September 1988, provides for comparison of work being performed by employees in female- and male-dominated classes. Pay equity will be accomplished in two phases; the first phase, to be completed by September 1990, will include civil servants, corrections employees, highway workers and two hospitals. The second phase will extend to employees of Crown corporations, other hospitals and school boards.

99. As a result of the decision in *Jan Bartholdy and the Nova Scotia Human Rights Commission v. Nova Scotia Department of Health and Fitness (Vital Statistics Division)* in August 1989, births may now be registered in a script or alphabet different from the Roman (English) characters in recognition of the fact that the names of children in their mother tongue may be different than names of children in Roman (English) alphabet used in Nova Scotia.

Article 9

100. The Royal Commission on the Donald Marshall, Jr. Prosecution, established to investigate the circumstances of this Micmac Indian wrongfully convicted for murder and imprisoned for 11 years, submitted its report in January 1990. The Royal Commission found that the criminal justice system failed Donald Marshall, Jr. at virtually every turn from his arrest and conviction in 1971 up to, and even beyond, his acquittal by the Supreme Court of Nova Scotia (Appeal Division) in 1983. The Province of Nova Scotia did not reject any of the 82 recommendations of the Royal Commission and the Minister Responsible has promised expeditious implementation of the recommendations which include:

(1) A compensation inquiry was appointed to review the adequacy of the compensation paid to Marshall in light of the findings of the Royal commission. This inquiry submitted its report on July 13, 1990. The Commissioner, although recognizing that no dollar figure can replace lost years, lost opportunities or compensate for the injury sustained by Donald Marshall, Jr. and his parents, recommended cash payments of $199,872 to Donald Marshall, Jr. and $80,023 to Mr. and Mrs. Marshall. The Commissioner also recommended that a lifetime annuity be provided to Donald Marshall, Jr. starting at $1,875.00 per month indexed at 3.00% per annum and that a lifetime annuity be provided to Mr. & Mrs. Marshall starting at $600.99 per month indexed at 3.00% per annum.

The Government of Nova Scotia has agreed to implement the recommendations immediately.

(2) The establishment of a Race Relations Division within the Nova Scotia Human Rights Commission has been approved by Government and is expected to be in place by the end of 1990.

(3) Legislation establishing the position of an independent Director of Public Prosecutions is currently before the House of Assembly and is expected to be passed by the closing of the session. The Director of Public Prosecutions is responsible for all prosecutions and appeals conducted on behalf of the Crown, and conducts them independently of the Attorney General.

Article 10

101. The Department of Solicitor General was established in 1987 and took over the areas of policing and correctional services in the province. The Attorney General continued to be responsible for the administration of justice through the courts. The purpose of this division was to further delineate the separation between the investigatory process and the prosecution process.

Article 24

102. *An Act Respecting Services to Children and Their Families, the Protection of Children and Adoption*, Bill 89, passed the third reading in June 1990. This Act, expected to come into force in September 1991, affirms the Government's commitment to maintain the family as the basic unit of society and requires that the paramount consideration, in all proceedings and matters pursuant to the Act, be the best interest of the child. Section 13(1) of the proposed Act states that:

> "Where it appears to the Minister or an agency that services are necessary to promote the principle of using the least intrusive means of intervention and, in particular, to enable a child to remain with the child's parent or guardian or to be returned to the care of the child's parent or guardian, the Minister and the agency shall take reasonable measures to provide services to families and children that promote the integrity of the family."

Article 27

103. As a result of the appeals in *Denny, Paul and Sylliboy v. Her Majesty the Queen*, 1990, S.C.C. 01965, S.C.C. 01966, S.C.C. 01983, Nova Scotia Micmacs won a major victory in their fight for Aboriginal rights. The Supreme Court Appeal Division ruled that Micmacs have unextinguished Aboriginal rights to fish for food, once the needs of conservation have been met, in waters on or off reserves throughout the Province.

104. In a separate case, a motion for acquittal made by Defense Counsel was not objected to by Crown Counsel resulting in a directed verdict and the acquittal of 14 Micmac hunters charged with various violations of the Nova Scotia *Wildlife Act*, R.S.N.S., 1989, c. 504.

NEW-BRUNSWICK

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105. Canada's first and second reports have provided information concerning New Brunswick legislation which gives effect to the provision of articles 1 to 27 of the Covenant. This report sets out measures which have been or are being undertaken since the Second Report of July 1989 was compiled.

Article 2

106. The *Human Rights Act*, R.S.N.B. 1973, c. H. 11, has undergone an extensive review in the past year with a view to ensuring that the orientation and scope of the Act provides sufficiently for the protection of human rights in the province.

Article 3

107. The *Pay Equity Act*, 1989, c. P-5.01, applies to all government employees in Part I of the Public Service as set out in the First Schedule of the *Public Service Labour Relations Act*. The *Pay Equity Act* sets out procedures for the application of a gender-neutral job evaluation system to ensure that men and women performing work of equal or comparable value receive equal pay. The Act is administered by the Pay Equity Bureau of the Board of Management.

Article 9

108. Amendments to the *Mental Health Act*, R.S.N.B. 1973, c. M-10, passed in May 1989 but not yet proclaimed, address any possible inconsistencies with the *Canadian Charter of Rights and Freedoms* and are designed to better protect the rights of patients in mental health facilities.

109. The *Mental Health Commission of New Brunswick Act*, 1989, c. M-10.1, was proclaimed April 1, 1990. It provides for a Commission to be established to make recommendations to the Minister of Health and Community Services and, at the direction of the Minister, to implement policy decisions made by the Minister respecting the manner in which mental health services are provided and delivered.

Article 14

110. An amendment to the *Provincial Court Act*, R.S.N.B. 1973, c. P-21, passed in June 1990, will, when proclaimed, establish three positions for lay representation on the Judicial Council of New Brunswick. This council reviews complaints resulting from the conduct of a member of the provincial judiciary.

Article 27

111. The provisions of the *Canadian Multiculturalism Act* are complemented in the province by New Brunswick's *Policy on Multiculturalism*, which was tabled in the Legislature on April 29, 1986. The Policy provides for a Ministerial Advisory Committee on Multiculturalism to assist in ensuring equality of and participation by all cultural groups in all aspects of the life of the province and appreciation and preservation of all cultural heritages.

QUÉBEC

Introduction

112. The Government of Québec committed itself to complying with the *International Covenant on Civil and Political Rights* by adopting Order in Council 1438-1976 on April 21, 1976.

113. The following report contains information on the measures taken by Québec to implement the Covenant since the second report, submitted in July 1989.

Part I: General

114. Since the submission of the last report, Québec has contributed to all the reports of Canada on implementation of the international human rights covenants and conventions to which it adheres. All of these reports have been submitted to the United Nations or to its specialized or related organizations.

Part II: Information on articles 3, 7, 10, 22, and 25(*b*)

Article 3

115. In 1985, amendments to Québec's *Charter of Human Rights and Freedoms* came into force. This represented the starting point of an overall strategy of intervention on the part of Québec aimed at taking concrete and significant initiatives in the area of affirmative action. In Decision 87-246 of September 23, 1987, the Government of Québec adopted the contractual compliance program (see paragraph 434 of the second report). The Human Rights Commission was given the mandate to evaluate the performance of companies and government consultants with respect to this program. By the end of 1989, twenty or so companies were already subjected to the program, while 72 other files not dealing with this program were being dealt with by the Affirmative Action Branch (see paragraphs 428 to 432 of the second report).

116. Among the various measures it has taken, the Government of Québec has provided professional and financial support for implementing affirmative action programs in the private, quasi-public and municipal sectors. To date, 62 municipalities and establishments in the education, teaching, and health and social services fields, as well as 17 private-sector companies, representing 408 establishments or plants, have obtained assistance from the Government to set up an affirmative action program. Under the same plan, the Québec Government implemented an affirmative action program in September 1987 and March 1990, designed to increase the proportion of women in certain Public Service employment categories and to help members of cultural communities gain access to the Public Service.

117. In October 1987, the Human Rights Commission adopted a position on workplace harassment. Two years later, a policy designed to counter sexual harassment in the workplace was issued to employers.

118. In June 1989, the National Assembly passed legislation specifying the mandate of the Human Rights Commission and creating a special tribunal with the power to make binding decisions in cases of discrimination (*Act to amend the Charter of human rights and freedoms concerning the commission and establishing the tribunal des droits de la personne*, SQ, 1989, c 51).

119. During the same session in June 1989, the National Assembly passed the *Act to amend the Civil Code of Québec and other legislation in order to favour economic equality between spouses* (SQ, 1989, c 55). The Act came into force July 1, 1989.

Article 7

120. In early 1989, Québec contributed to the first report of Canada on the implementation of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or*

Punishment. Furthermore, on November 17, 1989, Québec was involved in presenting the report of Canada to the UN Committee of experts charged with implementing this Convention.

Article 10

121. The question of juvenile offenses and of the distinction between intervention mechanisms for youth protection and for juvenile *delinquency will be dealt with in* Québec's section of the second report of Canada on articles 10 to 15 of the *International Covenant on Economic, Social and Cultural Rights*.

Article 22

122. The Human Rights Commission issued a notice on October 9, 1989, regarding the *Bill to establish the Commission des relations du travail* (33rd legislature, 1st session, p 1.30). This notice confirmed that, in general, the Bill was compatible with the *Charter of Human Rights and Freedoms*.

Article 25(*b*)

123. In 1988, the Commission permanente des institutions de l'Assemblée nationale was called upon to study the *Election Act* (RSQ, c E-3.2). The Human Rights Commission submitted a brief to the Commission containing recommendations dealing with the right of the mentally ill to vote and with third-party assistance during election periods.

ONTARIO

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124. This report updates the information in the First and Second Reports.

Article 2

125. Amendments to the *Human Rights Code* providing for a duty to accommodate the needs of disabled persons short of undue hardship, bearing in mind cost and safety factors, were proclaimed in April 1988.

126. The Office of the Public Complaints Commissioner, established under the *Metropolitan Toronto Police Force Complaints Act*, S.O. 1984, c. 63, provides a remedy for citizens who complain about the actions of police officers, in Metropolitan Toronto, including allegations of discriminatory treatment. The Office provides for civilian review and adjudication of complaints by the public against members of the police force.

127. Bill 107, the *Police Services Act*, was passed in June 1990. When proclaimed, Part VI of the Act will establish a mechanism for province-wide civilian review of complaints against the police based on the model referred to above. In addition, the Public Complaints Commissioner will have the power to initiate a complaint about the conduct of a police officer when directed to do so by the Attorney General. The *Police Services Act* also contains provisions requiring police forces to implement employment equity plans to hire women, racial minorities, persons with disabilities and Aboriginal peoples.

Article 3

128. A number of steps have been taken in the Ontario Public Service to implement the *Pay Equity Act* referred to in the Second Report. Three different pay equity plans were required: one for employees in the bargaining unit; one for management/excluded employees; and one for employees in the Ontario Provincial Police Association. The plans were implemented effective January 1, 1990, affecting 31,200 employees.

129. In 1987, the Ontario Government approved a plan to implement an Employment Equity Program in the Ontario Public Service for five designated groups: women, racial minorities, francophones, Aboriginal peoples and persons with disabilities. An Employment Equity Fund of $23.5 million was announced in November 1989 to assist ministries in implementing the plan.

Article 6

130. Effective January 1, 1990, premium payments for entitlement to benefits under the Ontario Health Insurance Plan (OHIP), a comprehensive health plan available to all Ontario residents (see Second Report), have been eliminated and replaced with a payroll tax, thus ensuring universal coverage and eliminating the need for premium assistance to low-income persons.

131. Substantial amendments to the *Workers Compensation Act* between 1983 and 1986 have revised the structure of the system for providing benefits to injured workers discussed in the First Report. Changes include restructuring of the appeal process, including an independent final level of appeal, and restructuring of benefits. Legislation proclaimed into force on January 1, 1990, provides for further reforms to the workers compensation system. The more significant changes include: improvement of the rights of persons permanently disabled from workplace accidents; a right to be reemployed following injury; and a new approach to rehabilitation.

132. Amendments to the *Occupational Health and Safety Act* which received Royal Assent on June 21, 1990, have created more extensive responsibilities in the area of health and safety in the workplace, to be jointly administered by employers and employees. The legislation has also created a new bipartite agency, the Workplace Health and Safety Agency.

Article 9

133. The *Provincial Offenses Act*, R.S.O. 1980, c. 400, as amended, replaces the *Summary Convictions Act* (see First Report) with a new procedure for arrest and prosecution of provincial offences, in order to distinguish between the procedure relating to summary criminal offences (a matter of federal jurisdiction) and provincial offences. The latter is intended to be a less formal procedure. The Act provides for, among other matters, limited powers of arrest and provisions relating to release.

Article 10

134. The *Training Schools Act* referred to in the First Report has been repealed. The *Child and Family Services Act*, S.O. 1984, c. 55, referred to in the Second Report

incorporates revised provisions relating to open and secure custody facilities for children under the age of 16, and provides for review mechanisms.

Article 11

135. Bill 161, which has been given first reading, would, if passed by the Legislature, abolish the *Fraudulent Debtors Arrest Act* referred to in the First Report.

Article 12

136. The *Mobility Rights Statute Law Amendment Act*, S.O. 1985, c. 5, amends certain Ontario statutes to conform with the requirements of the *Charter of Rights* ensuring liberty of movement in relation to employment.

Article 14

137. Amendments to the *Courts of Justice Act, 1984* in 1988 and 1989 provide for expanded rights of access to court proceedings in the French language. All proceedings in all courts can be conducted in either official language.

138. Summons and informations issued pursuant to the *Provincial Offenses Act* are issued in both French and English (this will be a legal requirement effective January 1, 1991).

139. The *Intervenor Funding Project Act*, S.O. 1988, c. 71, provides for a three-year pilot project to provide financial assistance to public interest groups intervening in proceedings before three administrative tribunals, the Environmental Assessment Board, the Ontario Energy Board and the Joint Board.

Article 18

140. The *Retail Business Holidays Act*, R.S.O. 1980, c. 453, provided for certain exemptions to the requirement that retail businesses be closed on Sundays. Although these provisions were upheld by the Supreme Court of Canada as not infringing freedom of religion, substantial amendments to the Act and to the *Employment Standards Act* were made in 1989 to provide for a new scheme governing work on Sundays and other holidays, including a mechanism for resolving disputes between employers and employees who do not wish to work on Sundays or other holidays. This scheme was recently declared unconstitutional by the Ontario Supreme Court and an appeal of this decision is pending.

141. Religious freedom in the context of education in Ontario is under review following recent decisions by the Ontario Court of Appeal. The case of *Zylberberg v. Sudbury Board of Education*, 65 O.R. 4th, 651, invalidated the provision for daily recitation of the Lord's Prayer on the grounds that it is limited to Christian observance. A new Regulation under the *Education Act* specifies that daily readings are permitted so long as they are not limited to one religion exclusively. The case of *Canadian Civil Liberties v. Elgin County Board of Education*, 71 O.R. 4th, 341, invalidated regulations which provided for religious instruction in schools.

Article 20

142. The *Human Rights Code*, S.O. 1981, as amended, replaces the Code referred to in the First Report. Section 12 prohibits the publishing or displaying of any representation which either indicates an intention to infringe a right protected by the Code or is intended to incite the infringement of a right.

Article 22

143. Pursuant to an amendment to the *Labour Relations Act*, it is now illegal for an employer to hire professional strike breakers or to engage in strike-related misconduct.

144. Recent amendments to the *Labour Relations Act* permit the Ontario Labour Relations Board to impose a first collective agreement on the parties where attempts at negotiating have been unsuccessful and it appears one party has been intransigent.

Article 23

145. The *Children's Law Reform Amendment Act, 1989*, S.O. 1989, c. 22, provides for a quicker and less expensive remedy for problems relating to access to children following marriage breakdown. Both the parent with custody and the parent with access may apply to enforce access orders.

Article 24

146. Amendments to the *Vital Statistics Act* allow parents to give a child the surname of either parent or a combination of both, irrespective of marital status, provided both parents consent. If parents cannot agree, children will received a hyphenated name.

147. The new *Change of Name Act*, S.O. 1986, c. 7, provides that, following marriage breakdown, the spouse with lawful custody may apply to change the name of children of the marriage. Consent of the non-custodial parent is only necessary where required pursuant to a court order or a separation agreement.

Article 25

148. Amendments to the *Municipal Elections Act* in 1988 ensure that polling places are accessible to persons with mobility impairments.

Article 26

149. A number of changes to the regulatory scheme governing pensions in Ontario were made in the new *Pension Benefits Act*, S.O. 1987, c. 35, and companion amendments to the Regulations under the *Employment Standards Act* to provide for equal treatment for men and women in pensions. Changes include: the elimination of sex-based mortality tables for calculating contributions and benefits; reduction of years of service requirements for vesting; improved portability coverage and treatment of part-time workers; extension of survivorship benefits; and pension splitting on marriage breakdown and retirement.

150. The provisions in the *Employment Standards Act* providing for special permits for handicapped persons, which enabled payment of less than the minimum wage, have been repealed.

151. Amendments to the Regulations under the *Employment Standards Act* removed differential treatment of most domestic workers in regard to wages and working conditions.

Article 27

152. The Ontario Policy on Race Relations, announced in 1986, sets out the government's commitment to equality of treatment and the removal of barriers to the full participation in society of racial and ethnic minorities. The policy indicates that the Government will take an active role in eliminating racially and ethnically discriminatory practices, implementing employment and service equity, enforcing laws relating to racial equality, and it specifically indicates that doctrines of racial superiority are unacceptable.

153. In December 1989, the Ontario Government announced its Guidelines for the Negotiation of Self-Government arrangements with Aboriginal peoples in Ontario.

154. The Ontario Native Affairs Directorate is a special-purpose office in the Ontario Government which advises and assists the Government's response to issues and concerns of Aboriginal peoples, and provides support to the Minister Responsible for Native Affairs. The Directorate's goal is to assist the Government of Ontario to create opportunities and initiatives which advance the rights and aspirations of Aboriginal peoples, contribute to an improvement in their quality of life, and resolve issues of concern within the authority, responsibility, resources and priorities of the Government of Ontario.

MANITOBA

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155. In 1979, Manitoba reported at length on its efforts to implement the provisions of the *International Covenant on Civil and Political Rights*. That report was updated in 1983, and again in 1987. The present report will therefore only highlight developments since the 1987 update, and comment briefly on several initiatives that had been enacted immediately prior to that report, but were actually put into operation subsequently.

1. Extraordinary powers of government

B. Deprivation of physical liberty

156. There have been substantial modifications to *The Mental Health Act* with respect to provisions permitting the involuntary detention of individuals at psychiatric facilities. In addition, *The Public Health Act* has been amended to extend provisions related to reportable diseases to HIV infection/AIDS, albeit on a non-nominate basis.

C. Restriction of freedom of expression

157. The Government is actively studying the extension of the classification system, created pursuant to *The Amusement Act*, to the video industry.

158. The reference in the 1987 report to *The Human Rights Code*'s restrictions on hate literature requires clarification. The Code, in fact, does not regulate hate literature or hate propaganda per se. This area has been left exclusively to the *Criminal Code* (federal). However, *The Human Rights Code* does limit freedom of expression to some degree through the prohibition of unreasonable discrimination in the form of sexual, racial and other forms of harassment, and the prohibition of signs and statements which discriminate or indicate an intention to discriminate with respect to any activity or undertaking to which the Code applies (e.g. housing, employment, and so on), or which incite, advocate or counsel such discrimination.

F. Other restrictions

159. *The Highway Traffic Act* was amended in 1989 to permit the seizure and temporary impoundment of vehicles driven by suspended drivers, and the imposition of immediate suspension of driver's licence upon individuals found operating vehicles while impaired by alcohol/drugs. The legislation also contains a detailed administrative appeal process for those persons who are alleged to contravene the legislation.

2. Protection of citizens from abuse of the government's extraordinary powers

160. Our previous report mentioned *The Freedom of Information Act*, which had been enacted but not proclaimed. This legislation was subsequently proclaimed on September 30, 1988. In the calendar year 1989, more than 500 applications were received, pursuant to the legislation. Two hundred and nineteen (219) requests were granted in full, 147 were granted in part, and 118 were denied. By far the greatest reason for refusal to provide information was the exemption set out in s. 41(1), namely that the record contained personal information on an individual or individuals. (This exemption provides a significant privacy protection to individuals.)

161. The Aboriginal Justice Inquiry was set up by legislation in 1989, to examine in detail the interaction between Manitoba's Aboriginal peoples and all aspects of the justice system (policing, the courts, legal aid, etc.). The Commissioners are expected to submit their report in the near future.

162. Amendments to *The City of Winnipeg Act* in 1989 included provisions for the creation of a city ombudsman, whose functions, at a municipal level, would be broadly similar to that of the provincial ombudsman. As 60% of Manitoba's population resides in Winnipeg, most Manitobans will potentially benefit from this change.

163. *The Legislative Assembly and Executive Council Conflict of Interest Act*, referred to in our previous report, has been further amended to make it applicable to senior public servants, as well as to elected provincial officials, and to provide a one-year "cooling off period" after such officials/employees leave office/employment before they can engage in business dealings with the provincial government.

3. Measures to ensure respect of rights between citizens

164. *The Testators Family Maintenance Act* was replaced in 1990 by *The Dependents Relief Act*, which seeks to transfer the legal support obligation owed by a deceased person during life to that person's estate, where a dependent is without reasonable provision for maintenance and support.

165. Amendments have also been made this year to *The Family Maintenance Act*, *The Marital Property Act*, *The Wills Act*, and *The Intestate Succession Act* (replacing *The Devolution of Estates Act*), although in some cases the new legislation has not yet been proclaimed.

4. Services and programs, in addition to above measures and protections, designed to enhance the rights of citizens

166. Reference was made previously to *The Pay Equity Act*, created to achieve equal pay for work of equal value in the public service. The legislative program created by that Act has now been essentially completed vis-à-vis the public sector: the provincial civil service, crown corporations and crown agencies. The Government is now encouraging the voluntary extension of pay equity principles, along the lines set out in *The Pay Equity Act*, to the private sector.

5. Measures taken ... to enhance civil and political rights in Manitoba

167. As noted earlier, *The Mental Health Act* was substantially changed in 1988 with respect to detention of individuals at psychiatric facilities. These changes were the product of concerns arising in the context of the *Canadian Charter of Rights and Freedoms*, and comments made by the Manitoba Court of Appeal in *Thwaites v. Health Sciences Centre et al* (1988), 51 Man. R. (2d) 196, which found that the former provisions violated the right of patients to be free from arbitrary detention. The amended provisions of the Act were subsequently challenged in *Bobbie v. Health Sciences Centre* (1988), 56 Man. R. (2d) 208 (Q.B.), and were found to adequately safeguard a person's rights in a manner consistent with the Charter.

168. The Child Abuse Registry, referred to in our previous report, has been altered to provide significantly enhanced procedural protection and rights of appeal to persons whose names are being considered for inclusion in the Registry.

169. *The Child & Family Services Act* was amended in 1989 to create a positive obligation upon such third parties as teachers, who have observed situations of apparent child abuse, to report same to the responsible authorities.

170. In the context of Article 27 of the Covenant, our previous report referred to the Supreme Court of Canada decision requiring translation of various government documents and implementation of bilingual procedures, in order to comply with constitutional requirements. The Court's directions set different deadlines with respect to different types of records. In accordance with the Court's order, all public laws and regulations, rules of quasi-judicial tribunals, and all municipal legislation have now been re-enacted in both languages. Private and unconsolidated public acts are in the process of translation.

SASKATCHEWAN

171. Saskatchewan's submission to Canada's Third Report under the Covenant will update to May 19, 1990 the information contained in its previous reports. Saskatchewan's submission contains only an outline of changes to information contained in the first two

reports. Saskatchewan looks forward to providing a more detailed submission to be included in Canada's Fourth Report on the Covenant.

Articles 2 and 26

172. In 1989, the *Saskatchewan Human Rights Code* was amended to include "mental disability" as a prohibited ground of discrimination.

173. According to the 1989 Annual Report of the Saskatchewan Human Rights Commission, the Commission received 243 complaints in 1989, a 6% increase over 1988. Forty-eight percent (48%) of the complaints involved discrimination in employment, 24% in public services and 4% in housing. The alleged grounds of discrimination broke down as follows: sex -- 26%; race, colour, place of origin or nationality -- 18%; disability -- 16%; marital status -- 14%; age -- 4%; religion -- 3%; and other grounds -- 19%.

174. The Human Rights Commission continues to order, approve and monitor affirmative action programs for the target groups of women, people of Aboriginal ancestry and people with physical disabilities. The programs fall into three broad groups: 1) Employment; 2) Training and Education; 3) Education Equity. To date, 35 affirmative action programs have been approved by the Commission.

Article 3

175. *The Homesteads Act*, R.S.S. 1978, c. H-5, was amended in 1989 to extend its protection to men as well as women. Prior to the amendment, a husband was prevented from alienating or otherwise dealing with a homestead without the written approval of his wife. That protection is now afforded to spouses of either gender.

Article 5

176. In 1989, the *Saskatchewan Human Rights Code* was amended to broaden the protection afforded against the publication or display of representations tending to expose to hatred, ridicule, belittlement or otherwise affronting the dignity of any person or group of persons on the basis of the Code's prohibited grounds of discrimination. The definition of "representation" is now open-ended and expressly includes "article" or "statement". The amendment was necessitated by a Court decision which held that newspaper articles were not covered by the former provision.

Article 7

177. For information on this Article, please refer to Saskatchewan's submission to Canada's Initial Report on the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*

Articles 13, 14, 15, 18, 23 and 24

178. *The Children of Unmarried Parents Act, The Deserted Spouses' and Children's Maintenance Act, The Infants Act*, and *The Legitimacy Act* are being repealed. Child and spousal maintenance will be dealt with under a single Act, *The Family Maintenance Act.* Custody and access, guardianship of children's property, child status and parentage will be governed by *The Children's Law Act.* These Acts are to be proclaimed October 1, 1990.

179. A major impact of these new Acts, relevant to this Covenant, is the elimination of distinctions among children based on legitimacy.

Article 18

180. The Saskatchewan Government now provides for the recognition of Independent Schools. This action allows parents to place their children in registered schools which reflect their religious beliefs.

Article 23

181. In 1988, the Premier of Saskatchewan tabled a paper on family issues at the annual Canadian Premiers' Conference in Saskatoon. The Premiers unanimously agreed to co-sponsor a Family Policy Conference hosted by Saskatchewan. In July 1989, "Symposium About Families" was held in Regina, with 750 delegates from across the country.

182. As a consequence of the symposium, a Minister of The Family was appointed. The Family Foundation, an agency responsible for family policy, was created.

183. The goal of the Family Foundation is to serve as a focal point for family policy in government and to evaluate the impact of government policies on Saskatchewan families. Another function of the Foundation is to establish and maintain effective communication with families in urban and rural communities through school, social groups, non-governmental agencies, human services agencies and religious organizations. An interdepartmental initiative, Forums about Families, will provide community family workshops, to be planned, organized and delivered by the communities themselves in response to their needs. The Foundation will not deliver or fund programs itself, but will be concerned with program delivery. The objectives of the Foundation will met through the work of other ministries of Government.

Article 27

184. The Report of the Task Force on Multiculturalism was released in September 1989. The Task Force was appointed by the Saskatchewan Government in July 1988, to review all aspects of multiculturalism in Saskatchewan, including the related topics of immigration and settlement. Public hearings were held throughout the province and 147 briefs were presented. The Report contained 67 recommendations in the areas of education, heritage languages, racism and discrimination, Aboriginal concerns, immigration, employment, media and facilities.

185. Among the recommendations was the establishment of a Multiculturalism Secretariat whose mandate would include:

1. Administering *The Saskatchewan Multicultural Act.*

2. Providing a focal point to address multicultural issues through the established policy development and decision making structures of government.

3. Providing a co-operative structure within government for the development of initiatives aimed at meeting the needs of the multicultural and ethnocultural communities and new immigrants.

4. Monitoring and co-ordinating all multicultural programs and services across government departments.

ALBERTA

I. Introduction

186. The following updates the information provided in Alberta's section of Canada's second report on this Covenant.

II. Measures adopted to give effect to the Articles of the Covenant

Article 2 and others including 9, 14, 26

187. In January 1990, the Government of Alberta established the Task Force on the Criminal Justice System and its Impact on the Indian and Métis People of Alberta. The basic objective of this Task Force is to review the criminal justice system in Alberta as it relates to Indian and Métis people and to identify problems and propose solutions to ensure that they receive fair and equitable treatment at all stages of the criminal justice system. It is anticipated that a final report will be prepared by December 31, 1990. The estimated cost is $1 million, of which the federal government will pay 50% up to a maximum of $500,000.

188. Also, a Commission of Inquiry on Policing in Relation to the Blood Tribe of Southern Alberta was established. The Inquiry commenced in May 1989 and completed hearings in March 1990. Key issues include the Royal Canadian Mounted Police and/or Lethbridge City Police's investigation of a number of suspicious deaths, the Cardston Blockade and general police/Blood Tribe relations. The estimated cost is $2 million. The final report is scheduled for completion by July 1990.

189. See also responses under Articles 3 and 26.

Article 3

190. The Alberta Government has introduced the Plan for Action for Women to improve the status of women in the 1990's and beyond. This Plan contains goals which form the long-term framework for government-wide action in the areas of the family, the workplace, education and training, health, the community, and the Alberta public service. It offers a direction to follow in addressing issues of concern to women. In particular, in the target area of the community, the Alberta Government intends to achieve the goal of increasing opportunities for women to participate in public life. Each year, the Government announces specific initiatives under the Plan and identifies the departments responsible for their implementation.

191. (See also the Alberta Section of Canada's Second Report to the *Convention on the Elimination of All Forms of Discrimination against Women.*)

Article 9

192. The *Tuberculosis Act*, the *Venereal Diseases Protection Act* and the *Public Health Act*, R.S.A. 1980, c. P-27, were repealed and replaced by the *Public Health Act*, S.A. 1984, c. P-27.1. Under the new *Public Health Act*, when a person is infected with an organism that produces a disease prescribed in the regulations and refuses or neglects to submit to medical, surgical or other remedial treatment, or to comply with any other conditions that have been prescribed by a physician as necessary to mitigate the disease or to limit its spread to others, an isolation order may be issued. The isolation order is authority to observe, examine, care for, treat, control and detain the person until that person is released.

193. The *Mental Health Act*, R.S.A. 1980, c. M-13, was repealed and replaced by the *Mental Health Act*, S.A. 1988, c. M-13.1, proclaimed in force January 1, 1990. Under the new *Mental Health Act*, a person who is suffering from a mental disorder and is in a condition presenting or likely to present a danger to himself/herself or others, and is unsuitable for admission other than by detention, may be detained.

194. A certificate of a physician is sufficient to detain a person at a facility for 24 hours. Two certificates issued by two physicians, after separate examination, are sufficient to detain a person for one month and the detention may be renewed. A judge may order a person to be examined, and a peace officer may convey a person to a facility for examination. When a person becomes a patient, the facility shall inform the patient and make a reasonable effort to inform his/her guardian and, unless the patient objects, his/her nearest relative, in simple language and in writing of the reason for his/her admission and of his/her right to apply to a review panel.

195. In the event of a language difficulty, the board shall obtain a suitable interpreter and provide the information and the required written statement in the language spoken by the formal patient or his/her guardian.

196. The patient may apply to a review panel for release and may appeal further to the Court of Queen's Bench. If a patient has been detained for a continuous period of six months, he/she shall be deemed to have applied to a review panel. Also, the Patient Advocate, who is appointed by the Lieutenant Governor in Council, shall investigate complaints from or relating to a patient who is detained.

Article 23

197. The "Certificates of incapacity" issued under the previous *Mental Health Act*, mentioned in Canada's initial report, no longer exist.

Article 24

198. Section 2.1 of the recently amended *Child Welfare Act* established the Office of the Children's Advocate. The Children's Advocate is mandated to advocate for children receiving services under the *Child Welfare Act*. The advocate's primary concern is to ensure that the child welfare system remains relevant and responsive to the needs of children by advocating for individual children and effecting positive changes to the system as a whole. The Children's advocate becomes involved on behalf of children as a result of requests or referrals from children or other interested parties, because of notifications from the Regional Operations system or his/her own initiative.

Article 26 (as related to article 2)

199. There are certain provisions in Alberta legislation that maintain a distinction between legitimate and illegitimate children. Section 47 of the *Domestic Relations Act* restricts the rights and obligations of the natural father with respect to an illegitimate child by restricting guardianship to the natural mother. The *Intestate Succession Act* permits an illegitimate child to inherit from his or her mother if she dies intestate, but allows a claim against the father's estate only when the father dies leaving no widow or lawful offspring, and paternity is acknowledged or declared.

200. The *Maintenance Order Act* imposes liability on the father to provide maintenance for a legitimate child. Similar provisions exist in the *Maintenance and Recovery Act* for the protection of an illegitimate child to recover from his or her putative father.

201. Bill 53, the *Parentage and Maintenance Act*, recently received second reading in the Legislative Assembly and is anticipated to become law. Generally, the Bill is designed to address a number of *Charter of Rights* issues and concerns. It removes discriminatory distinctions between "legitimate" and "illegitimate" children under the *Maintenance and Recovery Act* but not those under the *Domestic Relations Act*, and the *Intestate Succession Act*. Significant provisions of this Bill include: child maintenance up to 18 from 16 years of age; time limitation for application extended from 2 years from birth to 18 years; child maintenance no longer terminates automatically on marriage of mother; corroboration of mother's evidence as to paternity no longer required; needs of legitimate children no longer given priority over needs of illegitimate children; the declared father is required to make maintenance payments to his child up to 18 years of age on a monthly or periodic basis; provisions for court-ordered blood tests; and provisions regarding circumstances when paternity is presumed. The Bill also changes the fundamental focus from determination of "fault" to recognition of joint responsibility for children of unmarried parents.

BRITISH COLUMBIA

Article 7

202. Major revision of the *Police Act* took place in 1988. It is now cited as *Police Act*, S.B.C. 1988, c. 53. A more detailed and precise citizen complaint procedure is included in part 9 of the Act.

203. A Complaint Commissioner is newly established as part of the Police Commission, and members of the public now have the option of presenting a complaint to their own local Police Chief, or, if they are not comfortable doing so, directly approaching the Complaint Commissioner. This individual monitors all investigations, and ensures that inquiries under Part 9 are open to the public.

Article 14

204. Late in 1987 the Government of British Columbia appointed a Justice Reform Committee with a mandate to ensure that the justice system of the province is accessible, understandable, relevant and efficient to all those who are involved with the system. It

reviewed rules of procedure and rules of evidence in civil law and criminal law, studied the structure and jurisdiction of various levels of courts, and the use of alternate dispute resolution. The Committee reported one year later with a broad range of 182 recommendations in the above areas as well as the use of plain language in the justice system, needs of special groups (i.e. disabled, mentally ill, recent immigrants), fees and costs, and use of technology for information management. Within months of release of the Report, a number of these recommendations were implemented by means of the *Justice Reform Statutes Amendment Act*, S.B.C. 1989, c. 30.

205. A new *Victim's Rights and Services Act*, S.B.C. 1988, c. 64, contains provisions respecting the rights of victims of offenses and provides for victim assistance services. The Act also allows for a victim fine surcharge to be applied to offenders.

Article 27

206. In 1988 the Government of British Columbia established a Ministry of Native Affairs with a mandate to form good working relationships between Native people and the provincial government; encourage and support social, cultural and economic initiatives for Native People; help Native Bands or Tribal Councils seeking self-government; help solve problems between Native people and the provincial government; and to advise the Cabinet Committee on Native Affairs on policy related to Native people.

PART III: GOVERNMENTS OF THE TERRITORIES

YUKON

Article 3

207. The *Miscellaneous Statute Law Amendment Act*, 1990, aims at substituting masculine pronouns with gender neutral pronouns in territorial legislation.

Article 6

208. The Yukon Government has hired a full-time Acquired Immune Deficiency Co-ordinator to implement training, education and support services to the general public and to individuals infected with the HIV virus.

209. A Child Abuse Treatment Service was recently initiated by the Department of Health and Human Resources and is designed to provide group treatment and support for the children who have been physically or sexually abused.

210. The Safe Places Program is designed to assist five Yukon communities to develop proposals for the establishment of local safe homes.

211. The Yukon Government has launched a Family Violence Initiative designed to increase and enhance support and educational services to victims and perpetrators of family

violence. A Suicide Prevention Strategy is also under way to co-ordinate and develop a comprehensive government and community response to the problem of suicide.

212. The *Pesticides Act*, 1990, governs the safe and secure disposal and storage of dangerous pesticides.

213. The Air Quality Program was undertaken to test a number of Whitehorse houses for levels of noxious and/or harmful gases. Yukon-wide testing of radon gas is ongoing.

214. Recent amendments to the *Occupational Health & Safety Act* have further defined safety standards in the workplace.

215. A 24-hour Sexual Assault and Family Violence Information Line came into being on May 1st, co-sponsored by the Yukon Department of Justice and the Women's Directorate.

Article 7

216. The *Education Act*, 1990, prohibits the use of corporal punishment in Yukon schools.

Article 9

217. In May 1990, under the authority of the *Corrections Act*, 12 new Correctional Inspectors were appointed. Their mandate is to investigate complaints by inmates and make appropriate recommendations to the Director of Corrections and Law Enforcement.

Article 10

218. In September 1990, the Yukon Government opened the doors of the first separate "Secure" Juvenile Custody Facility in the territory.

219. The *Mental Health Act*, 1990, states that persons suffering from mental disorder should be provided with care and treatment in the least restrictive and least instrusive manner, and that the civil and human rights of persons suffering from mental disorders must be protected.

220. The legislative agenda for the fall of 1990 includes the consideration of legislation pertaining to the guardianship of adults and the administration of estates of adults under the guardianship of the territorial government.

Article 11

221. Since August 1989, the Territorial Judiciary has stopped imposing fines with default time for territorial and municipal offenses. The Government is presently developing a civil remedies program to avoid incarcerating individuals solely on the basis of their inability to pay a fine.

Article 14

222. Beginning December 1990, all new territorial legislation will be drafted in both French and English.

223. As of September 1990, all *Criminal Code* forms used by the Yukon Government have been rendered bilingual.

Article 18

224. The *Education Act*, 1990, allows Roman Catholics to establish separate schools.

Article 23

225. On April 30, 1990, the Yukon Government and the Public Service Alliance of Canada (the government employee's union) signed an agreement to redefine "spouse" in the Collective Agreement to include same-sex common law relationships. Spousal rights and benefits as outlined in the Collective Agreement will now be extended to all couples in long-term relationships.

226. The *Child Care Act*, 1990, emphasizes the need to involve parents in the development of quality child care and recognizes that comprehensive child care services are supportive of healthy families.

227. The *Education Act*, 1990, features provisions for greater involvement of parents in education and curriculum content.

228. An amendment to the *Student's Financial Assistance Act* allows the government to consider "family costs" when determining financial awards.

Article 24

229. The *Child Care Act*, 1990, sets out minimum standards for the provision of child care services in the Yukon.

230. The *Education Act*, 1990, focusses on all educational activities of students, including their rights and responsibilities. Included is the goal of developing "the whole child, including the intellectual, physical, social, emotional, cultural and aesthetic potential of all students to the extent of their abilities".

Article 27

231. On April 1, 1990, the Council for Yukon Indians, the federal government and the Yukon Government initialled the final Land Claims Settlement Agreement. This agreement must now be ratified by each of the Yukon First Nations.

232. A coalition of First Nations Bands have implemented a Tribal Justice system, which co-exists and interacts with the present justice system in the Yukon.

233. The *Education Act*, 1990, promotes the provision and access to Native languages and cultural education in Yukon schools. Included in this Act is the ability of school boards to "enter into agreements with Yukon First Nations for the provision of educational services".

234. The *Education Act*, 1990, articulates the right of Yukon students to French-language instruction.

NORTHWEST TERRITORIES

235. The court case referred to in paragraph 484 of the Second Report was heard at appeal [1988] N.W.T.R. 223 with the result that the legislation was found not to be in conflict with the *Canadian Charter of Rights and Freedoms*. The matter has now been argued before the Supreme Court of Canada but no decision has been rendered yet.

III. APPENDICES

The appendices have been added for purposes of Canadian publication.

III. APPENDICES

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APPENDIX I

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966

ENTRY INTO FORCE: 23 March 1976, in accordance with article 49

Canada acceded to the Covenant on May 19, 1976.
The Covenant entered into force for Canada on August 19, 1976.

PREAMBLE

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have en effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any state Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. *(a)* No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3*(a)* shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph, the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph *(b)*, normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any other charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. *(a)* Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the Parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal

offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality or rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

(a) Twelve members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the report submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph *(c)*, the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph *(b)*, to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph *(b)* shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph *(b)*, submit a report:

(i) If a solution within the terms of subparagraph *(e)* is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph *(e)* is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1. *(a)* If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an *ad hoc* Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph *(b)* is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under subparagraph *(c)*, the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the *ad hoc* conciliation commission which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

APPENDIX II

OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966

ENTRY INTO FORCE: 23 March 1976, in accordance with article 9

Canada acceded to the Protocol on May 16, 1976.
The Protocol entered into force for Canada on August 19, 1976.

The States Parties to the present Protocol,

Considering that in order further to achieve the purposes of the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant,

Have agreed as follows:

Article 1

A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

Article 2

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

Article 3

The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

Article 4

1. Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.

2. Within six months, the receiving State Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

Article 5

1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.

2. The Committee shall not consider any communication from an individual unless it has ascertained that:

(a) The same matter is not being examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.

3. The Committee shall hold closed meetings when examining communications under the present Protocol.

4. The Committee shall forward its views to the State Party concerned and to the individual.

Article 6

The Committee shall include in its annual report under article 45 of the Covenant a summary of its activities under the present Protocol.

Article 7

Pending the achievement of the objectives of resolution 1514 (XV) adopted by the General Assembly of the United Nations on 14 December 1960 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

Article 8

1. The present Protocol is open for signature by any State which has signed the Covenant.

2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 9

1. Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 10

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 11

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

Article 12

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretry-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation.

Article 13

Irrespective of the notifications made under article 8, paragraph 5, of the present Protocol, the Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars:

(a) Signatures, ratifications and accessions under article 8;

(b) The date of the entry into force of the present Protocol under article 9 and the date of the entry into force of any amendments under article 11;

(c) Denunciations under article 12.

Article 14

1. The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

APPENDIX III

CASE REFERENCES ON THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS AND INTERNATIONAL LAW*

(List produced in connection with the second report)

Charter	Charter Cases	International Law
s. 1 (limitation clause)	Hirt v. College of Physicians and Surgeons of B.C. (1985), 17 D.L.R. (4th) 472 (B.C.C.A.)	ICCPR: Art. 19 ECHR: Art. 10
	R. v. Hothi et al. (1985), 33 Man. R. (2d) 180 (Man. Q.B.)	ICCPR: Art. 18
	R. v. Keegstra (1984), 19 C.C.C. (3d) 254 (Alta. Q.B.)	ECHR ICCPR CERD: Art. 4(*a*)
	Luscher v. Deputy Minister Revenue Canada (1985), 17 D.L.R. (4th) 503 (Fed. C.A.)	ECHR: Art. 10
	McKinney et al. v. University of Guelph et al. (1987), 57 O.R. (2d) 1 (H.C.J.)	ICCPR ECHR
	Quebec Association of Protestant School Boards et al. v. Attorney General of Quebec et al. (1982), 140 D.L.R. (3d) 33 (Que. S.C.)	ECHR: Art. 4
	Red Hot Video Ltd. v. R. (1985), 18 C.C.C. (3d) 1 (B.C.C.A.)	ECHR
	Reich v. Alberta College of Physicians and Surgeons (1984), 3 Alta. L.R. (2d) 205 (Alta. Q.B.)	ECHR: Arts. 6-11 ICCPR: Arts. 12, 14, 18, 19(2), 21 and 22
	Taylor et al. v. Canadian Human Rights Commission (1987), 37 D.L.R. (4th) 577 (F.C.A.), leave to appeal granted (S.C.C., Dec. 31/87)	CERD
s. 2(*a*) (freedom of religion)	R. v. Big M Drug Mart, [1984] 1 W.W.R. 625 (Alta. C.A.)	UDHR: Art. 8 ECHR: Art. 9 ICCPR: Art. 18
	R. v. Hothi et al. (1985), 33 Man. R. (2d) 180 (Man. Q.B.)	ICCPR: Art. 18(3)

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* Including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights ((ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Universal Declaration of Human Rights (UDHR), the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), and the American Convention on Human Rights (ACHR).

	Jones v. R. [1986] 2 S.C.R. 284	ECHR: Art. 8(1); Article 2 of Protocol No. 1
	R. v. Morgenthaler et al. (1986), 22 D.L.R. (4th) 641 (Ont. C.A.)	ICCPR: Art. 18(3)
	Prior v. Minister of National Revenue (Tax Ct. Canada, Dec. 29/86) [1987] 1 C.T.C.	UDHR: Art. 18
	R. v. W.H. Smith et al., [1983] 5 W.W.R. 235 (Alta. Prov. Ct.)	ECHR UDHR
	Videoflicks Ltd. et al. v. The Queen (1984), 14 D.L.R. (4th) 10 (Ont. C.A.)	ICCPR: Art. 18
s. 2(*b*) (freedom of expression)	Allman et al. v. Commissioner of Northwest Territories (1984), 50 A.R. 161 (N.W.T.C.A.)	UDHR: Art. 19 ECHR: Art. 10 ICCPR: Art. 19
	Ford v. A.G. Quebec (1985), 18 D.L.R. (4th) 711 (Que. S.C.)	ECHR: Art. 10 ICCPR: Art. 19 UDHR: Art. 19
	Hirt College v. Physicians and Surgeons of B.C. (1985), 17 D.L.R. (4th) 472 (B.C.C.A.)	ICCPR: Art. 19 ECHR: Art. 10
	International Fund for Animal Welfare et al. v. the Queen, [1987] 1 F.C. 244 (F.C.T.D.)	ICCPR: Art. 19
	R. v. Keegstra (1984), 19 C.C.C. (3d) 254 (Alta. Q.B.)	ICCPR
	R. v. Kopyto (Ont. C.A., Nov. 27/87)	ECHR: Art. 10
	R. v. Sophonow (1984), 11 D.L.R. (4th) 24 (Man. C.A.)	ECHR
	Videoflicks Ltd et al. v. the Queen (1984), 14 D.L.R. (4th) 10 (Ont. C.A.)	ICCPR: Art. 19(2)
s. 2(*c*) (freedom of assembly)		
s. 2(*d*) (freedom of association)	Black et al. v. Law Society of Alberta (1986), 27 D.L.R. (4th) 527 (Alta. C.A.)	ICCPR: Art. 12 ECHR: Art. 11(2) UDHR: Art. 29(2)
	Dolphin Delivery Ltd. v. Retail, Wholesale and Department Store Union et al., [1984] 3 W.W.R. 481 (B.C.C.A.)	ICESCR: Art. 8(*a*) and (*d*)
	Levesque v. A.G. Canada (1985), 25 D.L.R. (4th) 184 (F.C.T.D.)	ICCPR: Forget v. Canada, [1985] Report of the Human Rights Committee 217

	Re Pruden Building Ltd. and Construction and General Workers' Union Local 92 et al. (1984), 13 D.L.R. (4th) 584 (Alta. Q.B.)	ECHR: Art. 11
	Public Service Alliance of Canada v. The Queen (1984), 11 D.L.R. (4th) 337 (F.C.T.D.)	UDHR: Art. 20 ICCPR: Art. 22 ECHR: Art. 11 ICESCR: Art. 8 ILO Convention No. 87: Arts. 3, 4, 5, and 8 ILO Conventions 95, 98, 151
	Reference Re Public Service Employee Relations Act [1987], 16 D.L.R. (4th) 359 (Alta. C.A.); [1987] 1 S.C.R. 313	UDHR ICESCR: Art. 8 ICCPR: Art. 22 ILO Convention No. 87: Arts. 1-11
	Retail, Wholesale and Department Store Union et al. v. Government of Saskatchewan et al. (1984), 19 D.L.R. (4th) 609 (Sask. C.A.); [1987] 1 S.C.R. 460	ECHR: Art. 11 ICCPR: Art. 22 ICESCR: Art. 8 Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO, 2nd ed., Geneva, International Labour Office, 1985
	Re Service Employees International Union Local 204 and Broadway Manor Nursing Home, (1983), 4 D.L.R. (4th) 231 (Ont. Div. Ct.)	ICCPR: Art. 22 ICESCR: Art. 8 UDHR: Art. 25 Constitution of the International Labour Organization ILO Convention No. 87: Arts. 1-4, 11
s. 3 (right to vote)	Levesque v. A.G. Canada (1985), 25 D.L.R. (4th) 184 (F.C.T.D.)	ICCPR: Forget v. Canada, [1985] Report of the Human Rights Committee 217
s.s. 4-5 (parliamentary rights)		
s. 6 (mobility rights)	Federal Republic of Germany v. Rauca (1983), 145 D.L.R. (3d) 638 (Ont. C.A.)	ICCPR: Art. 9 ECHR, Protocol No. 4: Art. 3(1)
s. 7 (right to life et al.)	Borowski v. A.G. Canada et al. (1984), 29 Sask. R. 16 (Sask. Q.B.); (1987), 56 Sask. R. 129 (Sask. C.A.)	ECHR: Art. 2(1)
	Deutsch v. Law Society Legal Aid Fund et al. (1985) 48 C.R. (3d) 166 (Ont. Div. Ct.)	ICCPR: Art. 14(3) ECHR: Art. 6

	Gershman Produce Co. Ltd. v. Motor Transport Board (1985), 14 D.L.R. (4th) 722 (Man. Q.B.)	ICCPR: Art. 9 ECHR: Art. 5
	Hayer v. Minister of Employment and Immigration (1987), 10 F.T.R. 203	U.N. Convention relating to the Status of Refugees
	R. v. Morgenthaler et al. (1986), 22 D.L.R. (4th) 641 (Ont. C.A.)	ICCPR: Art. 9 ECHR: Art. 5
	The Queen et al. v. Operation Dismantle Inc. et al., [1983] 1 F.C. 745 (Fed. C.A.)	ECHR: Art. 5
	Rowland v. R. (1984), 10 D.L.R. (4th) 724 (Alta. Q.B.)	ICCPR: Art. 9 ECHR: Art. 5
	Singh et al. v. Minister of Employment and Immigration, [1985] 1 S.C.R. 177	UDHR: Art. 25(1) U.N. Convention Relating to the Status of Refugees: Art. 1
	Vincent v. Minister of Employment and Immigration (1983), 148 D.L.R. (3d) 385 (Fed. C.A.)	ICCPR: Art. 13 UDHR: Art. 14(1) Convention and Protocol relating to the Status of Refugees: Art. 32
s. 8 (search and seizure)	Henry v. The Queen (1987), 10 F.T.R. 176	ICCPR
	Reich v. College of Physicians and Surgeons of the Province of Alberta (no. 2) (1984), 8 D.L.R. (4th) 696 (Alta. Q.B.)	ECHR: Arts. 6, 8, 9, 10 ICCPR: Arts. 12, 14, 18, 19(2), 21, 22
s. 9 (arbitrary detention)	R. v. Konechny (1984), 6 D.L.R. (4th) 350 (B.C.C.A.)	ICCPR: Art. 9(1)
	Mitchell v. A.G. Ontario et al. (1984), 150 D.L.R. (3d) 449 (Ont. H.C.J.)	ICCPR: Arts. 2 and 15
s. 10 (general)		
s. 10(*a*) (to be informed of reason of arrest)		
s. 10(*b*) (to retain counsel)	R. v. King, [1984] 4 W.W.R. 531 (Alta. Q.B.)	ECHR: Art. 5
s. 10(*c*) (habeas corpus)		
s. 11 (general)	R. v. Stiopu et al. (Alta. Q.B., Feb. 15/83)	ICCPR: Art. 14(3)(*d*) ECHR: Art. 6(3)
s. 11(*a*) (to be informed of charge)	A.G.B.C. v. Craig Prov. Ct. J and Carter (1984), 36 C.R. (3d) 346 (B.C.S.C.)	ECHR: Arts. 5, 6 ICCPR: Arts. 9, 14

	Re Warren et al. (1983), 35 C.R. (3d) 173 (Ont. S.C.)	ICCPR: Art. 14(3)(*a*)
s.11(*b*) (to be tried in a reasonable time)	The Queen v. Beason, [1984] 5 C.R.R. 29 (Ont. H.C.)	ICCPR: Art. 9(3) ECHR: Art. 6(2)
	The Queen v. Cameron, [1982] 6 W.W.R. 270 (Alta. Q.B.)	ECHR: Arts. 5(3) and 6(1) ICCPR: Art. 9(3)
	Carter v. The Queen (1984), 11 C.C.C. (3d) 284 (B.C.C.A.)	ECHR
	Re Regina and Carter (1984), 9 C.C.C. (3d) 173 (B.C.S.C.)	ECHR: Arts. 5(3) and 6(1) ICCPR: Arts. 9(3) and 12(3)
	Mills v. R., [1986] 1 S.C.R. 863	UDHR: Art. 8 ICCPR: Art. 9(3) ECHR: Art. 5(3)
	Panarctic Oils v. The Queen (1982), 141 D.L.R. (3d) 138 (N.W.T.S.C.)	UDHR
	Rahey v. R., [1987] 1 S.C.R. 588	ECHR: Art. 5
s. 11(*c*) (against self-incrimination)	Re Lazarenko, [1984] 2 W.W.R. 24 (Alta. Q.B.)	ECHR: Art. 6(1) and (3)
s. 11(*d*) (to presumption of innocence, fair trial)	Dahlem v. The Queen (1983), 29 Sask. R. 108 (Sask. Q.B.)	ECHR: Art. 6(1)
	Deutsch v. Law Society Legal Aid fund et al. (1985), 48 C.R. (3d) 166 (Ont. Div. Ct.)	ICCPR: Art. 14(3) ECHR: Art. 6
	R. v. Lace (1983), 3 C.R.R. 48 (Ont. Co. Ct.)	UDHR
	R. v. Leclerc (1982), 1 C.C.C. (3d) 422 (Que. S.C.)	ECHR: Art. 6(2)
	R. v. Oakes (1983), 40 O.R. (2d) 660 (Ont. C.A.): [1986] 1 S.C.R. 103	ECHR: Art. 6(2) UDHR: Art. 11(1) ICCPR: Art. 14(2)
	Walton v. A.G. Canada et al. (1985), 13 D.L.R. (4th) 379 (N.W.T.S.C.)	UDHR: Art. 10 Draft Universal Declaration on the Independence of Justice
s. 11(*e*) (to bail)		
s. 11(*f*) (to trial by jury)		
s. 11(*g*) (against retroactive criminal legislation)		

s. 11(*h*) (against double jeopardy)	R. v. T.R. (1984), 50 A.R. 56 (Alta. Q.B.)	ICCPR: Art. 14(7)
s. 11(*i*) (to benefit of lesser punishment)		
s. 12 (right against cruel treatment)	Collin et al. v. Kaplan et al. (1982), 1 C.C.C. (3d) 309 (F.C.T.D.)	Standard Minimum Rules for the Treatment of Prisoners
	Mitchell v. A.G. Ontario et al. (1984), 150 D.L.R. (3d) 449 (Ont. H.C.J.)	ICCPR: Arts. 7 and 15
	Smith v. R., [1987] 1 S.C.R. 1045	ICCPR: Art. 7 ECHR: Art. 3 UDHR: Art. 5
	Soenen v. Director of Edmonton Remand Centre et al., [1984], 1 W.W.R. 71 (Alta. Q.B.)	ECHR: Art. 3
s. 13 (right against self-incrimination)	Dubois v. The Queen, (1984), 11 C.C.C. (3d) 453 (Alta. C.A.)	ECHR: Art. 8 UDHR: Art. 12
s. 14 (right to interpreter)	Wyllie v. Wyllie (1987), 37 D.L.R. (4th) 376 (B.C.S.C.)	ICCPR: Art. 14(3)(*d*)
s. 15 (equality)	Andrews v. Law Society of British Columbia (1986), 27 D.L.R. (4th) 600 (B.C.C.A.)	CERD CEDAW: Art. 1 ILO Convention Concerning Discrimination in Respect of Employment and Occupation, No. 111 UNESCO Convention Against Discrimination in Education
	B.C. Building and Construction Trades Council et al. v. A.G. B.C. et al., [1985] 6 W.W.R. 726 (B.C.S.C.)	ECHR: Art. 14
	Bancroft v. University of Toronto (1986), 24 D.L.R. 620 (Ont. H.C.)	International Convention on the Suppression and Punishment of the Crime of *Apartheid* U.N. Charter UDHR CERD
	Re Boyd and Earl and Jennie Lohn Ltd. (1984), 11 D.L.R. (4th) 265 (Ont. H.Ct.)	ICCPR
	Canadian Odeon Theatres Ltd. v. Saskatchewan Human Rights Commission and Huck (1985), 39 Sask. R. 81 (Sask. C.A.)	ICCPR Declaration of the Rights of Disabled Persons

	Century 21 Ramos Realty Inc. et al. v. R. (1987), 58 O.R. (2d) 737 (Ont. C.A.)	ECHR: Art. 14
	R.v. MacDonald (1982), 39 O.R. (2d) 753 (Prov. Ct.)	UDHR
	MacVicar v. Superintendent Family and Child Services (1987), 34 D.L.R. (4th) 488 (B.C.S.C.)	ECHR: Art. 14
	Paquette v. R., [1986] 3 W.W.R. 232 (Alta. Q.B.)	Covenants referring to language (not specified)
	R. v. Punch, [1986] 1 W.W.R. 592 (N.W.T.S.C.)	CERD: Art. 1
	Reference re French Language Rights, [1987] 5 W.W.R. 577 (Sask. C.A.)	CERD: Art. 1 CEDAW: Art. 1 ILO Convention No. 111: Art. 1*(a)*
s. 23 (language rights)		
s. 24 (remedy)	Mills v. R., [1986] 1 S.C.R. 863	ICCPR: Art. 2(3) UDHR: Art. 8
s. 27 (multicultural heritage)	Videoflicks Ltd. et al. v. R. (1984), 14 D.L.R. (4th) 10 (Ont. C.A.)	ICCPR: Art. 27
s. 28 (sexual equality)	A.G. Canada v. Stuart (1982), 137 D.L.R. (3d) 740 (Fed. C.A.)	CEDAW: Art. 11
s. 32 (application of Charter)	Bhindi and London v. B.C. Projectionists Union (1985), 20 D.L.R. (4th) 386 (B.C.S.C.)	ECHR

APPENDIX IV: CITATIONS FOR CASES REFERRED TO IN THE THIRD REPORT

A.G. Canada v. Druken et al., (1988) 9 C.H.R.R. D/5359 (F.C.A.); leave to appeal refused (S.C.C., March 3/89)

A.G. Que. v. Irwin Toy Ltd et al., [1989] 1 S.C.R. 927

Andrews v. Law Society of British Columbia, [1989] 1 S.C.R. 143

Badger v. Attorney General of Canada, [1989] 1 W.W.R. 216 (Man. C.A.); leave to appeal refused (S.C.C., June 8/89)

Duarte v. R., [1990] 1 S.C.R. 30

Edmonton Journal v. A.G. Alta. et al. (1989), 64 D.L.R. (4th) 577 (S.C.C.)

Ford et al. v. A.G. Que., [1988] 2 S.C.R. 712

Fraser v. Public Service Staff Relations Board, [1985] 2 S.C.R. 455

Gauthier et al. v. Canadian Armed Forces, (1989) 10 C.H.R.R. D/6014 (H.R. Tribunal)

Hufsky v. R., [1988] 1 S.C.R. 621

Ladouceur v. R. (1987), 59 O.R. (2d) 688 (Ont. C.A.); appeal dismissed (1990), 57 C.C.C. (3d) 22 (S.C.C.)

Lavigne v. Ontario Public Service Employee Union et al. (1989), 56 D.L.R. (4th) 474 (Ont. C.A.); leave to appeal granted (S.C.C., June 8/89)

Law Society of Alberta v. Black et al., [1989] 1 S.C.R. 143

Mahé et al. v. Attorney General of Alberta, [1990] 1 S.C.R. 342

McKinlay Transport Ltd. v. The Queen, [1990] 1 S.C.R. 627

Osborne v. The Queen, (1988), 89 CLLC 14,032 (F.C.A.); leave to appeal granted (S.C.C., June 8/89)

R. v. Andrews and Smith (1988), 28 O.A.C. 161 (Ont. C.A.), decision of S.C.C. pending

R. v. Kalanj (1986), 26 C.C.C. (3d) 136 (B.C.C.A.); appeal dismissed [1989] 1 S.C.R. 1594

R. v. Keegstra (1988), 65 C.R. (3d) 289 (Alta. C.A.); decision of S.C.C. pending

R. v. Mercure, [1988] 1 S.C.R. 234

R. v. Oakes, [1986] 1 S.C.R. 103

R. v. Sheldon S., (S.C.C., June 28/90)

R. v. Whyte, [1988] 2 S.C.R. 3

Reference re Sections 193 and 195.1(1)(c) of the Criminal Code (1990), 56 C.C.C. (3d) 65 (S.C.C.)

Société des Acadiens v. Association of Parents, [1986] 1 S.C.R. 549

Sparrow v. The Queen, (S.C.C., May 31/90)

Syndicat des Employés de Productions du Quebec et de l'Acadie v. Canadian Human Rights

Commission, (1990) 11 C.H.R.R. D/1 (S.C.C.)

Taylor et al. v. Canadian Human Rights Commission, [1987] 3 F.C. 593 (F.C.A.); decision of the S.C.C. pending

Turpin et al. v. The Queen, [1989] 1 S.C.R. 1296

Wilson v. R. (S.C.C. May 31/90)

APPENDIX V: UNITED NATIONS HUMAN RIGHTS COMMITTEE

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

(International Covenant on Civil and Political Rights, Article 28)

Membership

The following persons are currently serving on the Human Rights Committee:

Name of member	Country of nationality
Mr. Francisco José AGUILAR URBINA**	Costa Rica
Mr. Nisuke ANDO***	Japan
Miss Christine CHANET***	France
Mr. Joseph A.L. COORAY*	Sri Lanka
Mr. Vojin DIMITRIJEVIC***	Yugoslavia
Mr. Omran EL SHAFEI***	Egypt
Mr. Janos FODOR**	Hungary
Mrs. Rosalyn HIGGINS**	United Kingdom of Great Britain and Northern Ireland
Mr. Rajsoomer LALLAH**	Mauritius
Mr. Andreas V. MAVROMMATIS**	Cyprus
Mr. Joseph A. MOMMERSTEEG*	Netherlands
Mr. Rein A. MYULLERSON**	Union of Soviet Socialist Republics
Mr. Birame NDIAYE***	Senegal
Mr. Fausto POCAR**	Italy
Mr. Julio PRADO VALLEJO***	Ecuador
Mr. Alejandro SERRANO CALDERA**	Nicaragua
Mr. S. Amos WAKO**	Kenya
Mr. Bertil WENNERGREN***	Sweden

* Term expires on December 31, 1990.
** Term expires on December 31, 1992.
*** Present term expires on December 31, 1990. Reelected for another 4 year term starting on January 1, 1991. Two new members will start serving on January 1, 1990: Mr. Kurt Herndl from Austria and Mr. Waleed M. Sadi from Jordan.

Functions

The Committee studies the reports submitted by States Parties to the Covenant, and considers communications from individuals claiming to be victims of violations by a State Party to the Covenant and Optional Protocol of any of the rights set forth in the Covenant.

The Committee may also consider communications from a State Party concerning another State Party, when the two parties have recognized the competence of the Committee in this respect under Article 41 of the Covenant.

The Committee drafts general comments expressing its views on the interpretation of the provisions of the Covenant.

The Committee generally holds three-week sessions in March-April, July and October-November of each year. By the end of 1990, the Committee will have held 40 sessions.

The Committee reports on its activities to the General Assembly, through the Economic and Social Council.

Documentation

Information on the activities of the Committee is available in several series of documents.

The *Report of the Human Rights Committee*, submitted annually to the General Assembly, describes the activities of the Committee. It includes information on the consideration of reports submitted by States Parties to the Covenant, the consideration of communications under the Optional Protocol, and the Committee's general comments. The decisions adopted by the Committee with regard to communications submitted under the Optional Protocol are published in annex. The report is published as a supplement to the official records of the General Assembly.

The Committee's deliberations are presented in the *summary records* of the Committee's meetings. Only the records of public meetings are for general distribution. The records of private meetings are not made public, and are generally records of sessions in which communications are considered. Records are available under the symbol CCPR/C/SR.... Thus, the records of the meetings during which the Committee considered the initial report of Canada, on March 25, 26 and 28, 1980, bear the symbols CCPR/C/SR.205, CCPR/C/SR.206, CCPR/C/SR.207, CCPR/C/SR.208 and CCPR/C/SR.211. The records of the meetings during which the Committee considered the supplementary report of Canada, on October 31 and November 1 and 2, 1984, bear the symbols CCPR/C/SR.558, CCPR/C/SR.559, CCPR/C/SR.560 and CCPR/C/SR.562.

The *reports submitted by States Parties to the Covenant* are also published as Committee documents, under the symbol CCPR/C/.../Add.... Thus, the initial report of Canada, submitted April 18, 1979, is published under the symbol CCPR/C/1/Add.43 (Vol I and II); the supplementary report of Canada, submitted September 7, 1983, bears the symbol CCPR/C/1/Add.62; and the second report of Canada, submitted July 28, 1989, bears the symbol CCPR/C/51/Add.1; and the third report of Canada, submitted August 17, 1990, will bear the symbol CCPR/C/64/Add.1.

The *Yearbook of the Human Rights Committee* covers a two-year period and comprises two volumes. Volume I contains the summary records of the public meetings of the Committee's sessions; Volume II contains the reports of States Parties and other public documents considered during the sessions, the reports of the Committee to the General Assembly, and reservations, declarations, notifications and communications relating to the Covenant and Protocol.

The following have been published to date:

1977-1978 Yearbook, Volumes I and II (CCPR/1 and CCPR/1/Add.1), in English and in French;

1979-1980 Yearbook, Volumes I and II (CCPR/2 and CCPR/2/Add.1), in English and in French;

1981-1982 Yearbook, Volumes I and II (CCPR/3 and CCPR/3/Add.1), in English and in French.

The 1983-1984 edition is under printing.

The United Nations have also undertaken to publish selected decisions of the Human Rights Committee under the Optional Protocol to the Covenant. The first volume, published in English in 1985 and in French in 1988, contains selected decisions of the period 1976 to 1982, second to sixteenth sessions, (document CCPR/C/OP/1). The second volume was published in English in 1989 (document CCPR/C/OP/2).

The Human Rights Committee has adopted to date 19 general comments on (chronological order of adoption) the reporting obligation, reporting guidelines, article 2 of the Covenant (implementation at the national level), articles 3, 4, 6, 7, 9, 10, 19, 20, 1, 14, 6, the position of aliens under the Covenant, article 17, article 24, non-discrimination, and article 23. The first 18 general comments are contained in documents CCPR/C/21/Rev.1 and CCPR/C/21/Rev.1/Add.1. The comment on article 23 is to be published soon in document CCPR/C/21/Rev.1/Add.2.